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CURRENT TOPICS

Dates for Trials

BEFORE our issue last week appeared our comments on the desirability of fixing dates for trials had become unnecessary. Last Thursday the LORD CHANCELLOR announced that a scheme for fixed dates for the trial of witness actions in the Queen's Bench Division in London is being prepared. The decline in litigation, the transfer of cases to the county courts and the establishment of the Crown Courts at Liverpool and Manchester have all contributed to the lessening of pressure which makes such a scheme possible. Some similar scheme would probably be welcomed at the larger Assize towns but would be much more difficult to operate because of the smaller number of judges. The biggest single contribution which could be made to the success of the scheme and to the economical use of judges' time is to reduce to a minimum the wars of nerves which are prolonged right up to and even inside the doors of the court, but we cannot think of any effective way of doing this.

Still Another Step Forward

WE congratulate Mr. LESLIE MERVYN PUGH on being the first solicitor to be appointed a stipendiary magistrate. Mr. Pugh was admitted in 1928 and after a period of private practice became clerk to the Swansea justices. He was appointed clerk to the Sheffield justices in 1945 and in addition to the Sheffield West Riding justices in 1947. Before the passing of the Justices of the Peace Act, 1949, solicitors were not eligible to be stipendiary magistrates, but largely as the result of the persuasion of The Law Society the protective walls crumbled and Mr. Pugh's appointment at Huddersfield in succession to the late Mr. W. R. Briggs is the first fruit of the 1949 change. We wish Mr. Pugh a successful career: we trust that he will not be overworked and that he will be followed by others.

Crown Privilege

Whitehall v. *Whitehall*, decided last week by the Court of Session (*The Times*, 1st December), provided an illustration of the difference between the Scottish and the English law concerning evidence for which Crown privilege is claimed, referred to more than once in the Commons debate on Crown privilege on 26th October. As in *Broome* v. *Broome* [1955] 2 W.L.R. 401; 99 SOL. J. 114, the evidence related to the marital affairs of a member of H.M. Forces. It will be recalled that in *Broome* v. *Broome* SACHS, J., ruled that the

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oral evidence of a witness was admissible, as the Crown had declined an adjournment to improve the Secretary of State for War's certificate that it was not in the public interest that the evidence should be given, but that Crown privilege attached to documents on the matter in the custody of the War Office. Sachs, J., held that the certificate was not in such a form as to enable him to ascertain what was the nature of the testimony to the disclosure of which the Crown objected. In *Whitehall* v. *Whitehall* the Crown wished to intervene in order to borrow letters written to a soldier's wife by the Soldiers', Sailors' and Airmen's Families Association with a view to the Minister certifying that it would be contrary to the public interest that the letters should be produced in court. The Crown contended that the morale of the forces would be lowered unless any letter received by a soldier's wife from the S.S.A.F.A. concerning her affairs was treated as secret, and not capable of being referred to in court, even by the recipient. In admitting the evidence the court emphasised that so far as Scotland was concerned the courts retained the right in an appropriate case to disregard the ministerial certificate and to order the production of the document. In England, it would appear from *Duncan* v. *Cammell Laird & Co., Ltd.* [1942] A.C. 624 and *Broome* v. *Broome*, the Crown can refuse to produce this class of documents if they are in their custody. All that we are assured by the LORD CHANCELLOR'S recent policy statement is that the Crown is willing to waive its legal privileges in certain classes of case, but not to consent to an alteration in the law which confers those privileges.

Sane or Insane

AMONG the vital subjects debated in the House of Commons last week was whether it should be possible to raise at a criminal trial the issue of insanity or of diminished responsibility except with the consent of the accused. It is self-evident that if an accused person is insane, he is the least suitable person to give instructions to his advisers. It is impossible to place on the prosecution the burden of proving sanity; the only feasible course is to presume sanity. We think that a possible solution would be to allow the judge to take the initiative, if he deems it desirable, if the issue is not raised by the defence. The judge has the right in criminal cases to summon before him witnesses who are not called either by the prosecution or by the defence. We cannot see what objection there could be to a judge who has reason to suppose that a prisoner is or was insane requiring medical evidence on the subject. It may well be that the welfare of the accused is sufficiently safeguarded by the administrative action taken by the Home Office after conviction and sentence, but we think that if an accused person is or was insane the trial is the proper place for that fact to be established.

Whither Local Government ?

IN his address to the Local Government Legal Society entitled " Whither Local Government ? " on 17th November, Professor R. C. FITZGERALD, LL.B., solicitor and Dean of the Faculty of Laws at University College, London, gave an interesting survey of modern trends in local government. Important functions had been transferred to the central Government or to *ad hoc* authorities, especially since 1946, and resulted in a reversion in some way to the nineteenth century system. Further, functions still vested in local authorities had been subjected to an increase of central Government control. Professor FitzGerald went on to say that he personally doubted whether the critics of centralisation were right. He thought that the vesting in the Minister of Transport in 1936 of 3,500 miles of trunk roads, and in 1946 of a further 3,700 miles or more, was a perfectly proper transfer of functions. He also considered that the transfer of the electricity and gas services had been very proper. These should be dealt with on a national rather than a local basis. Professor FitzGerald thought that both housing and education should be dealt with on a national basis. As to reorganisation of local government, Professor FitzGerald asked if it was democratic for the Minister to say that one could not have this and one could not have that, and how representative of the wishes of the local electorate were the local authority associations ? Were they democratic bodies representing the electorate and not more concerned with the views of councillors and officials ? The London County Council were outside the negotiations altogether and the Minister was shirking the problem of Middlesex. The Government had decided that the two-tier system should be retained. He thought there should be only one kind of local authority, and that should be the county borough. Local authorities should have only those functions which could be understood by the persons coming forward to serve on them and for running which the resources of the authority were sufficient.

Better Luck Next Time

THE last chapter in the sorry tale of the Solicitors' Remuneration Order, 1956, was written on 29th November with the making of an Order in Council—the Solicitors' Remuneration (Disallowance) Order, 1956—giving effect to the House of Commons prayer that the order be disallowed. The debris thus having been tidied away, one may yet hope that the purpose of the order will be achieved in due course. But if that is to be, its sponsors will have to brush up their procedure.

All for One

WE hope nobody will think us too solemnly unappreciative of the coy humour of some of those little pieces " from a correspondent " with which *The Times* brightens its Court Circular page nowadays if we allow ourselves to think aloud about the effort of 28th November, headed " Solicitor's Clerk." The glimpse it afforded its readers of the deep-dyed deception which goes on in those abysses of iniquity where the affairs of the unfortunate become the sport of lawyers and their minions will probably surprise the layman chiefly by its resemblance to routine office procedure in more innocent purlieus. Obviously the article was not designed as a piece of institutional advertising. But without taking the affair too seriously solicitors and their staffs will be wise to ponder the writer's parenthetical " alas, why do all clients imagine they are the only ones ? " It is the inalienable right of every client to be from time to time, as occasion demands, " the only one." Not only is it the client that pays the piper; it is that solicitor alone who can make his clients feel that their problems are commanding all his attention and all the resources of his experience and of the organisation of his office who deserves success. Within these columns we can confidently put on record the extreme variability of clients, how some are more difficult to serve than others, and some exceed all reasonable limits. That does not seem to us to justify the extreme methods, of which we recently heard tell, of the solicitor who laid down rigid consulting hours for all clients and refused to make appointments or to see them at any other time. We are a profession without a Sabbath.

JUDGE IN HIS OWN CAUSE?

THE Committee on Administrative Tribunals and Enquiries, otherwise known as the Franks Committee, have in the past few months been sitting for many days to hear evidence from interested associations and persons on present defects in the existing system and on proposals for reform. The object of this article is to mention two particular sets of circumstances met with in practice and falling within a certain type of case brought to the notice of the Committee in which the scales may seem to be weighted against the citizen, and to suggest how the reader may best advise his client when confronted with the seeming injustice involved. The type of case is that in which the Minister is to all intents and purposes a judge in his own cause in an issue which he has apparently already prejudged.

In their evidence to the Committee the General Council of the Bar adopted, *inter alia*, two rules formulated by the Donoughmore Committee (the Committee on Ministers' Powers which reported in 1932) for importing the necessary element of natural justice into ministerial procedures, namely—

(1) a man may not be a judge in his own cause; and

(2) (*a*) every party concerned has a right to have his case heard; and

(*b*) every party (if (*a*) is to be a reality) must know in good time the case which he has to meet.

These rules may seem to be lacking from the two sets of circumstances to be considered here, which are as follows—

(1) where the Minister of Housing and Local Government has directed a local planning authority to take some action under the Town and Country Planning Act, 1947, adverse to a client's interests, and

(2) where the Minister on his own initiative, without reference to the client, has modified a development plan submitted to him by a local planning authority for approval.

Directions by the Minister

Under s. 100 of the 1947 Act, which is headed "Default powers of Minister" the Minister is entitled to direct a local planning authority, *inter alia*, to serve an enforcement notice, to revoke or modify a planning permission, or to make a tree preservation order or building preservation order; alternatively he may take this action himself. It is only fair to say that, with the exception of the making by himself of building preservation orders, it is very rare for the Minister to take any action under this section, as it is the Ministry's policy to leave matters to local discretion as much as possible where they are not of national or other substantial concern. It is much more usual to encounter a direction from the Minister in connection with development proposed by a client which does not accord with an approved development plan.

The latter type of direction arises from the requirement of the Town and Country Planning (Development Plans) Direction, 1954, that, before a local planning authority grant permission for development not in accord with the development plan and which either is a substantial departure from the provisions of the plan or injuriously affects the amenity of adjoining land, they shall send a copy of the application for permission with a statement of the reasons why they wish to grant it to the Minister. If the Minister disagrees with the wish of the authority it is open to him to direct the authority to refer the application to him for decision under s. 15 of the 1947 Act, but more often it is the practice of the Ministry to write a letter to the authority directing them to refuse permission.

It will be found that where the Minister directs action or proposes to take action himself the owner concerned will have under the Act the usual right to appeal or to object and to require a hearing before a person appointed by the Minister, e.g., where the Minister directs refusal of planning permission there is the usual right to appeal against the refusal. But, the client may ask, is it worth while to appeal in such a case to a Minister who has apparently decided the issue already?

It may in many cases be worth while to take advantage of the right of appeal or statutory right of objection, as the case may be. The Minister's direction is in truth no more than a decision that, on the facts before him, there is a *prima facie* case for refusing the permission or for taking whatever other action may be in question. Indeed letters issued by the Ministry following references under the 1954 Direction often specifically state that "on the information before him," or words to a similar effect, the Minister directs that permission be refused. It may well be possible, and in practice it is not unusual, to convince the Minister by detailing the full facts and circumstances at a public inquiry before one of the Minister's inspectors that the action directed to be taken is not the right action.

Thus, the writer has known the Minister not to confirm a revocation order the making of which he had directed, and to allow, on appeal, in whole or part residential or industrial development which he had directed should be refused.

The issue is really only prejudged to the extent that the development plan and the broad policy in it has already been approved by the Minister, but of that there can be little complaint as there is, of course, a statutory right to object to the plan at the time it is before the Minister for approval. It may, however, be possible to show that there has been some change in circumstances since the plan was approved which justifies an alteration of the broad policy embodied in it. More often, however, it is a case of seeking to convince the Minister that the broad policy of the plan would not be prejudiced by the development proposed. Thus, if the client wishes to introduce industry into a small town for which the plan contemplates no new industry and no substantial expansion of population, it may be possible to satisfy the Minister that such labour as is likely to be required will be available in the town without the necessity for building houses for workers brought in from elsewhere and that the industry will benefit the town.

The difficulty in appeals arising under the 1954 Direction is to know the case which has to be met, for the local planning authority must of necessity be on the side of the appellant; otherwise the development would not have been referred to the Minister under the Direction. No case will, therefore, be put forward at the inquiry against the appellant, who is left to guess at what may be in the Minister's mind, apart of course from such information as may be gathered from the development plan itself and the letter directing permission to be refused.

Generally, it may be said that if it would have been worth while to appeal or object had the action in question been taken by the local planning authority on their own initiative, it will be worth while, indeed probably more worth while, as the local planning authority will generally be in agreement with

one's client, to take a similar course if the action is prompted by the Minister. Despite the outward appearance of the Minister's being in these cases a judge in his own cause, there is no reason, in the writer's experience, to doubt that in practice justice is done, but there is equally no doubt that these directions give rise to great misunderstanding and suspicion, and, where the client is in the event unsuccessful in his appeal or objection, to feelings of injustice and dissatisfaction even where on the merits there is no ground for them.

Modification of development plans

The second set of circumstances mentioned above for consideration in this article is where the Minister on his own initiative has modified a development plan submitted to him by a local planning authority. When a plan, or a proposal for the amendment of a plan, is submitted to the Minister for approval it is advertised and placed on deposit for public inspection. A landowner may inspect the plan and find that his land is allocated for, say, industrial or residential development ; this may be very pleasing to him and therefore he does not object. However, the Minister may think that the authority have provided too much land for industry or housing and, when he approves the plan, he may modify it so as to alter the allocation of the land, e.g., from industry to residential, or from industry or residential to a " white area " showing no allocation at all. There is no right of objection to such a modification. What is the owner to do when he discovers the modification ?

This power of the Minister to modify a plan without reference to the owners concerned was brought to the attention of the Franks Committee in the evidence of the Royal Institution of Chartered Surveyors, of the Town and Country Planning Association, and of the Association of Land and Property Owners. The point was duly put by the Committee to Dame Evelyn Sharp, one of the Ministry's witnesses before them. Her reply was that " . . . if the Minister proposes a really major alteration seriously affecting rights he would not proceed to alter the plan, but would either leave that part blank or ask the local planning authority to consider making an amending plan. It is perfectly true that he has on occasion made alterations to the plan, as indeed he must do . . . If, when he is going to do that, he should have the whole matter exposed once again to enquiry the process would be endless." Later, when asked whether it would be possible, if it came to a planning appeal, for special consideration to be given to an applicant who had had no opportunity of objecting to a modification, she replied : " I know of one case in which an applicant said : ' I do not think in relation to my bit of land that the change made when the plan was approved was a reasonable or a practicable one,' and his appeal was then allowed. But it is perfectly fair to say that the dice are weighted once the plan is altered ; that must be true."

In the writer's view the weighting of the dice amounts in most cases simply to there being a *prima facie* case for the alteration as in the case of the directions discussed earlier. Therefore, an owner in such a case may well be advised to apply for planning permission and to appeal if refused.

The writer was not long ago concerned with just such a case where the Minister had altered, in approving the plan, an allocation of land from industrial to residential despite the fact that there was no objection submitted by anyone to the industrial allocation. The owner applied for permission to erect an industrial building ; this application met with the approval of the local planning authority, who inevitably referred it to the Minister under the 1954 Direction, and the Minister in turn directed that it be refused. An appeal to the Minister followed and, after a local inquiry, was allowed. Thus, the Minister may be said to have prejudged the issue twice, and yet it was possible to convince him that he was wrong.

Conclusion

While the Minister's prejudgment in all the cases which have been discussed in this article may, therefore, be no more prejudicial to the ultimate decision than the finding by an examining justice of a *prima facie* case and the consequent committal of the offender for trial, it cannot be pretended that the Minister's sitting as examining justice and subsequently as judge and jury at the trial can be regarded as outwardly satisfactory, however fairly and impartially the system is at present administered. Public confidence in the administration would undoubtedly be strengthened if some alternative could be found, though it has to be admitted that if, as must be the case, the final decision is to rest with the Minister, the task is a difficult one.

R. N. D. H.

THE GREATEST OF THESE

No human virtue is more vulnerable to the cynic than charity. The word itself bears so many different meanings and carries so many different nuances for different people that those who engage in practical charity are easy targets for iconoclasts who, with a notable absence of charity, are alert to place the worst possible construction on every human activity. St. Paul wrote the last word on charity in his First Epistle to the Corinthians, and it is really superfluous to say any more. It is not our purpose to deliver a sermon, even if we were capable of so doing, and so we will confine our text to the Oxford English Dictionary. There we learn that among many other things charity means " a disposition to judge leniently and hopefully of the character, aims and destinies of others, to make allowance for their apparent faults and shortcomings." " Yet," continues the cautious dictionary, " often it amounts barely to fair-mindedness towards people disapproved of or disliked, this being appraised as a magnanimous virtue." Which shows how careful we must all be and how ruthlessly we must analyse ourselves if we happen to be given to that kind of thing, lest our virtues turn out to be vices after all. We tend to think more charitably of ourselves than of others.

Nevertheless, in a sense somewhat different from that intended by St. Peter, charity has often covered the multitude of sins. Let us look again at the Oxford Dictionary, where we find under Phrases : " a. Cold as charity : referring to the perfunctory, unfeeling manner in which acts of charity are often done, and public charities administered (but cf. Matt. xxiv. 12). Charity begins at home : used to express the prior claims of the ties of family, friendship, etc., to a man's consideration (cf. 1 Tim. v. 8, etc.)." And that is all. The word which should convey the " Christian love of our fellow men " became so dishonoured that the translators of the Revised Version of the Bible abandoned it and substituted " love." If we follow the directions of the dictionary and refer to Matthew xxiv. 12 we find : " And because iniquity shall abound, the love of many shall wax cold," and if we refer to

1 Timothy v. 8 we find : " But if any provide not for his own, and specially for those of his own house, he hath denied the faith and is worse than an infidel." The truth is that no one can be charitable in water-tight compartments. We are continually reminded that charity does begin at home by some who would do well to remember the snatch of dialogue in " The School for Scandal " :—

> Rowley : I believe there is no sentiment as has such faith in as that " charity begins at home."
>
> Surface : And his, I presume, is of that domestic sort which never stirs abroad at all.

Let us consider why charity in the past has left some people feeling vaguely uncomfortable. We say " in the past," since for reasons we shall develop later we think that the situation has altered radically.

First, we must remember that until quite recently many of the necessities of life for large numbers of people were dependent on private charity. Notwithstanding the generosity of individuals the total need was far in excess of the available resources ; too much had to be accomplished on too little and there resulted the parsimony of necessity. The fault lay not with those who felt the urge to help their fellow men and women but with those who did not, with the nation as a whole which failed to shoulder its proper responsibilities. The Poor Law was a kind of rate-financed charity, incorporating all the financial stringency of private charity with only some of its advantages. The love of many waxed cold, and those whom misfortune had smitten hard and who may have felt resentful against life were apt to equate the hardness of their lot with the sparsity of the help available to them. If the majority, or even a substantial minority, of Englishmen had had one-tenth of the generosity and sympathy of a small and gallant band—and the means to give practical expression to their feelings—Oliver Twist and the early chapters of Jane Eyre could never have been written or, if written, could have been easily exposed as the irresponsible exaggerations of agitators.

Secondly, there have been some in the past who have given freely, but coldly, only in order to advance themselves in their own estimation and in that of their fellow men. Others have been charitable in order to be powerful, and have given money on the strict understanding that they must dictate how it shall be spent and have derived some satisfaction from the sense of power which the distribution of largesse gives. Yet pride in achievement and the right use of power are not necessarily unworthy. Within limits we are as we are made. There are those who are born to cut a figure and to exercise power. There are worse ways of cutting figures and exercising power than by endowing hospitals and schools or by the advancement of science. Conquest and oppression are only two. It would be foolish to condemn munificence because behind it there has been some human motive which the moralist may not rate highly. Gifts may be without charity within the meaning of St. Paul, but there is every expectation that charity may follow hard upon them.

Lack of funds ; public apathy ; self-glorification ; desire for power. If we are honest with ourselves we must confess that all these have clouded the rays of charity. We may add to motives of self interest the hope of salvation. There have been some who have devoted themselves to amassing money with a singleness of purpose comparable with that of the saints in other fields of endeavour and have then expended their declining years in unloading their wealth in an effort to justify themselves in their own eyes and in the sight of their fellows.

Let us admit all this and much more. The cheering fact still remains that for centuries thousands and millions of men and women have given freely of their substance, whether it be large or small, for no reason other than that they felt sympathy and pity and desired to help. Happily for the world they still exist in their thousands and millions. The wells of charity can always be tapped but they do not flow automatically. A nation can be roused to help the Hungarian refugees and the victims of disasters, whether at home or abroad. We sometimes tend to forget the continuing needs of those whose misfortunes do not hit the headlines, and it is for the most part the purpose of the charities whose announcements appear in this issue to meet these continuing but less conspicuous needs.

During the past ten years there has been a remarkable change in the situation. Whereas in the past too great a burden has been allowed to fall on private philanthropists, the nation has now realised its own responsibilities. The principal reason for this change was the war, which revealed to ordinary decent human beings, whose wells of charity are very near the surface, conditions and miseries of which they never knew. Bombs make the whole world kin and it was essential for public action to be taken without too many questions being asked. The war brought in its train high taxation which receded with the coming of peace, but much of it was retained, not only for the purposes of defence but also to make possible social services of an extent undreamed of before the war. This was done with the agreement of all political parties and with the approval of the vast majority of the nation. That approval was obtained not because it led to the glory of the electors or pandered to their desire for power, but because the conscience of the nation was stirred, and the public apathy which had caused the coldness and penury of charity dissolved.

While the Welfare State was in course of construction, many people asked what would happen to private charity and said that it would be a retrograde step if the individual were able to shuffle off all his personal responsibilities on to the State. It was suggested that there would be no opportunities for those who wished to participate in helping the unfortunate and that with the signing of cheques for our rates and income tax and with paying excessive prices for our alcohol and tobacco we would have done all that our consciences demanded of us. How wrong were those who argued thus can be seen from this issue. We all rejoice that the public purse has been opened so that no one who needed medical treatment need go without, so that children who are deprived of a normal home life now in ever increasing numbers live in conditions as near to a home as human resource can make them, so that old people in various ways are helped, so that the disabled are guided in obtaining employment and sustained while they are adapting themselves to their infirmities. Yet there is no need to use the statutory services. If there are some who wish to add to the services which the State provides there is everything to be said for doing so. Nothing can be wrong which adds to the sum of human happiness. Every private organisation of charitable work must relieve the pressure on the public purse and enable the statutory authorities either to improve their own services or to develop new ones or even—and this is no unworthy cause—to diminish their demands on the public. More important than this, however, is the supplementary help which private charity can give. In spite of the large amount of money which public authorities spend every year, the need is still great and there are two principal ways in which private charity can act with advantage.

First, those who are able to contribute financially can do a great deal by contributing to the funds of such causes as the organisations which provide for hospital patients amenities of various kinds which the wealthier patients or their families can provide for themselves. Again, children who are cared for by local authorities have Christmas presents and summer holidays, but their share of these things is still very much smaller than that of children who have an ordinary family life and whose parents have the means to give them what they wish. Likewise there are hundreds of thousands of old people who are living only a little above the subsistence level and whose lives could be brightened by private gifts. In these and many other ways the statutory services can be filled in and improved and there is no lack of opportunity for those who prefer to contribute in this way rather than by financing private charities organised on parallel lines to the services provided by the State and local authorities. In addition there is still, in spite of the Welfare State and all its works, plenty of unhappiness left untouched which could be made a little more endurable by gifts of money.

The second way in which the private individual can make a valuable contribution to happiness is by personal service. There was a time when to engage in charitable works in the eyes of some involved sitting on committees and "slumming," but there has always been much more to it than this. For many years men and women have done a useful and devoted service by making Braille books for the blind; we can think of nothing which more faithfully carries into effect Chapter 13 of the First Epistle to the Corinthians. We read in the recently published report of the Ministry of Health that in the neighbourhood of a holiday home for the deaf local residents have learned the manual language of the deaf and can now carry on conversations with their visitors. The committee which recently reported on the Training and Rehabilitation of Disabled Persons said that there is a need for fuller and better provision of welfare services for the disabled and scope for considerable development, although this does not apply so much to the blind for whom a very great deal is already being done. The committee suggest that local authorities should spend much more on this kind of work, and, although they suggest an Exchequer grant, this means a further charge on the local rates. As much of the service which is needed in this field is personal rather than financial, it is manifestly a field in which voluntary effort can play its full part. Already local authorities work in close co-operation with voluntary organisations in many fields of welfare; the welfare of the disabled is one where there is plenty of opportunity to spend both money and time.

This issue contains a wide range of announcements by charities of all kinds. We appeal to our readers not to take refuge in the plea of high taxation and the Welfare State; these are matters for pride but not for complacency. We urge them not to analyse too deeply their motives; few of us to-day have the means to exercise power through charitable gifts or to inspire banner headlines by the vastness of our munificence. As we write, hatred, bitterness and misunderstanding, to say nothing of undisguised enmities, are filling the front pages of the newspapers. What the world needs is more charity in the deepest and widest significance of the word; charity in thought and deed. And while charity does undoubtedly begin at home it need not end there.

RATING OF CHARITABLE AND SIMILAR ORGANISATIONS

CHARITABLE and similar organisations, and on the other side of the fence rating authorities, have now had nearly nine months of the operation of s. 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, under which organisations falling within the section are given two privileges: (i) a statutory limitation on their liability for rates in 1956–57 to the amount chargeable on the same hereditament in their occupation in 1955–56 (with a proportionate relief in subsequent years (subs. (2)), and (ii) a right to apply for excusal of the whole or part of their rates by the rating authority, though excusal is purely in the discretion of the authority (subs. (4)). The section has given rise to numerous administrative problems and to at least one surprising administrative decision in that of Huddersfield Borough Council to excuse rates on the dwelling-houses of all ministers of religion, as being concerned with the advancement of religion.

The principal difficulty under the section, however, has been that of determining which organisations are entitled to the benefit of it. Only organisations strictly within its terms can claim the statutory relief and they only can be granted excusal by the rating authority, so that it is vital in each case to know what the section means. There has so far not been time for cases to reach the superior courts, but half a dozen have been decided at quarter sessions and it is understood that two or three of these are to be carried further. Many more cases are believed to be pending. In addition, some old authorities have been "dug up," which it is suggested throw light on the construction of the section.

One problem with which organisations have been concerned is that of the appropriate remedy where relief is refused by the rating authority. The view of the Ministry of Housing and Local Government expressed at the time of the consideration of the Bill by Parliament that a sufficient remedy was already available is no doubt correct, but the fact remains that two alternative steps are open, to both of which there are technical objections. The more obvious one is to resist an application for the issue of a distress warrant for the full rates by the rating authority, but, owing to a sequence of decisions imperfectly modifying an ancient judgment, it can be argued that the right to the relief cannot be raised in this way. The other is appeal against the rate, which is open to objection on the ground that the Act does not require the relief to be shown in the rate charge in the rate but contemplates its being allowed in the collection of the rate and shown in the rate book as an amount written off as irrecoverable. This is open to dispute and there are possible answers to it also, but the procedure is technical and the appeal must be brought to the next practicable quarter sessions after the making of the rate or the arising of the grievance, which is not always practicable. Nevertheless, it is noteworthy that all the half-dozen cases so far have been appeals against the rate. Resisting the issue of a distress warrant is a simple

and straightforward method, however, where appeal against the rate is no longer available, though appeal from the justices can proceed only to the Divisional Court.

"Not established or conducted for profit"

The first requirement of any organisation seeking relief under the section (except in the case of alms-houses) is that it shall not be "established or conducted for profit" (s. 8 (1)). There is no definition of the expression, and it does not seem to be employed in any existing legislation. However, the words "established for any purpose of profit" were used in the original Joint Stock Companies Act, 1844, s. 2, and were construed in three cases during the next fifteen years (the phrase was abandoned in the consolidating Companies Act, 1862).

In *R.* v. *Whitmarsh* (1850), 15 Q.B. 600, the main object of a company was to purchase land and existing dwelling-houses thereon to be allotted to members, and raising a fund out of which moneys were to be applied for the benefit of members, being allottees of the land. The directors were empowered to sell the land at an increased price beyond the purchase price and rentcharges were payable by allottees. There was a power to pay dividends when the funds exceeded the amount necessary to provide allotments for all the shareholders. It was held that the company was not established for any purpose of profit. Lord Campbell, C.J., said (p. 618): "These advantages to individual shareholders do not fall within the description of a profit to the company arising from its funds, and were not relied on in argument. With respect to the powers conferred on the directors of selling land that might have been purchased they were not given for any purpose of profit by purchase and resale, but as subsidiary only to the governing purpose of providing allotments in respect of which the sale or other transfer of parcels of land might occasionally become convenient. It would be accidental only if profits arose from the exercise of these powers; and the exercise of them was clearly not the purpose for which the company was established." The rentcharge was held not to make the company "established for any purpose of profit."

This decision was followed in *Bear* v. *Bromley* (1852), 18 Q.B. 271: a society was similarly held not to be "established for any purpose of profit," the power of lending money to members and receiving interest thereon being held not to bring it within that class. In *Moore* v. *Rawlins* (1859), 28 L.J.C.P. 247, the object of a company was to enable each member to become the possessor of a house in respect of every share subscribed for, first as tenant of the company at a rent and afterwards as absolute owner and proprietor. When every member had obtained a house the company was to be wound up. A power to make and sell bricks, to purchase and sell all kinds of building materials and to contract for and perform all kinds of work in the building business was held to be incidental to the main object of the company which was not for any purpose of profit.

In these three cases the emphasis was on the *making* of a profit by the company, but three later cases turned on whether a society was in the nature of a joint stock company under the Literary and Scientific Institutions Act, 1854. In *Re the Bristol Athenæum* (1889), 43 Ch. D. 236, an institution the rules of which forbade a distribution to members was held not to be in the nature of a joint stock company, which presumably meant that it was not established for any commercial purpose or any purpose of profit (under the 1844 Act in force at the passing of the 1854 Act). In *Re Jones* [1898] 2 Ch. 83, a similar society was expressly held not to be established for any purpose of profit. And this principle would seem to have been accepted in *Re Russell Institution* [1898] 2 Ch. 72.

Unfortunately, the first three of these cases were cited in only one of the five quarter sessions decisions on s. 8 of the 1955 Act, and the last three not at all. The decisions on the point were conflicting. In *Independent Order of Oddfellows* v. *Islington Metropolitan Borough Council* (1956), 49 R. & I.T. 686; *Derbyshire Miners' Welfare Committee* v. *Skegness Urban District Council (No. 2)* (1956), 49 R. & I.T. 778; and *National Benefit Building Society* v. *Skegness Urban District Council*, 17th September, 1956, organisations were held not to be established or conducted for profit on the ground that (in the latter two at least) there could be no distributions to members. On the other hand, in *Ideal Benefit Society* v. *Birmingham City Council* (1956), 49 R. & I.T. 646, and *Ideal Benefit Society* v. *Worcester City Council* (1956), 49 R. & I.T. 738, the view was taken that the organisation was conducted for profit, the financial transactions of the friendly society concerned being for the advantage of members, albeit in the form of sickness, old age and similar benefits. In the latter case, *R.* v. *Whitmarsh*, *Bear* v. *Bromley* and *Moore* v. *Rawlins* were distinguished as being on a different Act, with different wording, passed for a different purpose.

"Social welfare"

The second main topic of controversy has been the meaning of "social welfare" in the expression "otherwise concerned with the advancement of . . . social welfare." The general meaning of social welfare can be deduced from the Miners' Welfare Act, 1952, s. 16 and Sched. III. It clearly covers the poverty class of charities and also various aspects of the public welfare class, including particularly recreation and, it would seem, sport.

The principal controversy has ranged over whether the element of public benefit ordinarily necessary to constitute a charity must be imported into the expression "social welfare" so as to exclude, for instance, an organisation existing primarily for the benefit of members. Public benefit for the purposes of a charity means either benefit of the public at large, or the benefit of a sufficiently substantial section of it, such as a county, town or parish, but not the employees of a company, however large, and not a mere club. The words "social welfare" are used in association with "charitable objects" and may therefore have the same restricted connotation, particularly as s. 8 (1) (*a*) would itself largely cover the playing fields specially provided for in s. 8 (1) (*c*) if extending to ordinary clubs.

Nevertheless, there are important arguments against this view. Evidently the need for public benefit can hardly apply to the poverty aspect, because it does not apply to that branch of charities, and that makes it difficult to apply to other aspects. Moreover, social welfare in the Miners' Welfare Act plainly does not require a public benefit and it would seem that the phrase "otherwise concerned with the advancement of religion, education and social welfare" brings in the non-charitable aspects of religion and education, i.e., those not conferring any public benefit, and so similar aspects of social welfare. Finally, it is not easy to understand why the words "organisation" and "not established or conducted for profit" are included if restriction of cases to public benefit is implicit in "social welfare," since they would surely be unnecessary.

The decisions at quarter sessions are again indecisive on this point (there are no older authorities) and rather curiously largely the reverse of the way they were decided on "conducted for profit" (to the disadvantage of the organisation). In the *Islington* case, the friendly society was held to be concerned with the advancement of social welfare and this was accepted by the recorder in the *Birmingham* appeal. But in the *Skegness* appeals the opposite view was taken.

In a sixth quarter sessions case a miners' convalescent home at Skegness was held to come within the section (*Derbyshire Miners' Welfare Committee* v. *Skegness Urban District Council*, 17th September, 1956).

F. A. A.

RECENT ADOPTION CASES

THERE can be few more charitable deeds than that of the couple who adopt some unfortunate parentless child and give it parental love and affection that otherwise it might have missed. Whilst saying this, the value and importance of the work being done in the institutional type of home cannot be over-emphasised. Of course, this is but one type of adoption met with by the courts, as lawyers and others (including those charitable organisations making their appeals in this journal to-day) will appreciate. The social side of adoption can best be left to others to expound; in this article it is proposed to consider some of the cases decided by the High Court (other than succession, settlements, etc.) in the years since the passing of the Adoption Act, 1950, which consolidated the enactments relating to adoption and which came into force on the 1st October, 1950. In 1953 a Government Departmental Committee was appointed to consider the law relating to the adoption of children and to report whether any and, if so, what changes in policy or procedure are desirable in the interests of the welfare of children. Their report was published in 1954 (Cmd. 9248). A brief reference to the report relating to the matters dealt with in the cases will be included.

Those in close contact with adoption proceedings realise the importance and delicate nature of them. The matter is aptly put by Sir Raymond Evershed, M.R., in *Re P., an Infant* (1954), 118 J.P. 139: "Authority is not needed to emphasise, not only the great importance, particularly for the child affected, of any order that may be made, but also to emphasise that cases which arise under the Act are likely to touch the most intimate affections and emotions of people, particularly the child's parents."

Residence

A requisite to the making of an adoption order is that, by s. 2 (5) of the Act, the applicant and infant must reside in England (which includes Wales: s. 45). The Adoption Act, 1950, applies to Scotland with modifications to conform to Scots law, but this article is concerned only with the law as applicable in England and Wales. In *Re Adoption Application No.* 52/1951 [1951] 2 T.L.R. 887; 95 SOL. J. 711, Harman, J., had to consider an application where the husband returned to his duties in the Nigerian Colonial Service before the application was heard and abandoned his application. The wife remained in England and persisted in her application. She intended to join her husband in Nigeria as soon as possible after obtaining the order, taking the infant with her. The learned judge examined the sections of the Act and said that throughout there is "resident in England" or "resident in Great Britain" and "resident abroad" as being two things which are the converse one of the other, and that seemed to make it difficult to suppose that under this Act, unlike the fiscal Acts, a person may be resident in two places. He decided that it was a question of fact and that "resident" denoted some degree of permanence. It does not necessarily mean that the applicant has a home of his own, but it means that he has his headquarters in this country. He continued: "... in my judgment the court must ask itself in every case, 'Is the applicant resident in this country?' In the present case, when I ask myself that question in respect of the wife, I can only answer 'No. She is merely a sojourner here during a period of leave.' Like her husband, she is resident in Nigeria where his duties are and whither she accompanies him in pursuance of her wifely duties." The learned judge stated that during the previous two years three orders had been made on a footing which seemed inconsistent with the judgment he had felt bound to deliver, but he considered the course which had been followed wrong. The attention of the Departmental Committee was drawn to this decision and, after consideration, the committee has recommended that subs. (5) of s. 2 should be repealed, and that an applicant who is domiciled here but normally lives abroad should be entitled to lodge an application on declaring an intention to live in a particular area from the time of giving notice to the local authority of his intention to apply for an order until the order is made. In all cases the male applicant should be present in this country for at least six weeks and would normally be present at the hearing. The licensing system dealing with the transfer of children abroad should be maintained.

Consent unreasonably withheld

A provision which did not appear in the Adoption of Children Act, 1926, is the court's power to dispense with the consent of any person whose consent is unreasonably withheld. That provision is now contained in the Adoption Act, 1950, s. 3 (1) (*c*). In a circular issued by the Home Office it was stated that this ground transferred the emphasis from the demerits of the adult whose consent is otherwise required to the interests of the welfare of the child, but it was not long before the High Court had to judicially consider this provision in *Hitchcock* v. *W. B. and F. E. B.* [1952] 1 T.L.R. 1550; 96 SOL. J. 448. Lord Goddard, C.J., pointed out that in custody and guardianship cases the test which any court, whether the High Court or a court of summary jurisdiction, has to apply is the benefit of the child. But the mere fact that the adoption will be for the benefit of the child is not an answer to a question whether a parent is unreasonably withholding consent. Devlin, J., said that there had been a change from the Adoption of Children Act, 1926, and the prescribed test is no longer the welfare of the child. The test to be applied is whether the attitude of a parent in refusing consent is unreasonable as a parent. The welfare of the child is of indirect importance, but the child's welfare is no longer the sole test. The burden lies on those who assert that the refusal is unreasonable.

Hitchcock v. *W. B. and F. E. B.*, a decision of the Queen's Bench Division, was approved in *Re K. (an Infant)*, *Rogers* v. *Kuzmicz* [1952] 2 T.L.R. 745; 96 SOL. J. 764, by the Court of Appeal, which held that the withholding by a parent of a consent could only properly be held to be unreasonable in exceptional circumstances. In that particular case the fact that the order, if made, would conduce to the welfare of the child, that the mother had seen fit to place the infant in the care of foster parents (without in any way abandoning it) and that she had previously consented to the adoption were not evidence that her consent was unreasonably withheld. In the course of his judgment, Jenkins, L.J., said that it was unnecessary, undesirable and indeed impracticable to attempt a definition covering all possible cases . . . each case must depend on its own facts and circumstances. The test to be applied was held to have been properly applied by justices in *Watson and Another* v. *Nikolaisen* [1955] 2 W.L.R. 1187; 99 SOL. J. 379, where it was held that the "abandonment" in s. 3 (1) (*a*) of the Act (the court has power to dispense with consent on this ground) means such an abandonment as would render a parent liable under the criminal law. Lord Goddard, C.J., said: ". . . but in adoption proceedings, unlike proceedings for care and custody, the welfare of the child is not the primary consideration. The parent may have forfeited his or her rights to have the care and custody of a child, but it is another thing to say that he or she must, on that account, give consent to the child's being adopted so that the child becomes a member of the family of the adopting parents and the natural parent loses all parental rights in relation to the child."

So far, in the cases considered, the decisions have been unfavourable to the applicants for adoption, but the next two show that if the court hearing the application applies its mind to the right considerations and there is evidence on which it can find there has been an unreasonable withholding of consent and makes the order, the High Court will not intervene. The first is *L.* v. *M.* (1956), 120 J.P. 27, where the father of the child concerned refused his consent (as the justices found) not in his desire to exercise parental rights and keep the child as part of his family, but because he desired to spite the mother. His appeal against the making of an order was dismissed. The second case is *W. and Another* v. *D. and Another* (1956), 120 J.P. 119, where the mother of a male child consented to adoption, but later withdrew her consent, expressing a preference for adopters other than those proposed in the event of the child which was soon to be born to the female applicant being male. A male child was subsequently born to the female applicant. The mother had no objection to the applicants as adopters and was still willing for her child to be adopted. The justices were of opinion that the objection raised by the mother was unsound and unreasonable and, as her consent was withheld solely by reason of such objection, dispensed with it and made an order. The Queen's Bench Division stated that the question whether a consent is being withheld unreasonably is essentially a question of fact, and if the justices come to a conclusion of fact the Divisional Court cannot reverse them on that conclusion. In this particular case the court could not say there was no evidence on which the justices could find that the objection was unreasonable. The Departmental Committee recommends the removal of this ground from the statute and the addition of a further specific ground in terms which allow the court to dispense with the consent of a parent who in its opinion has made no attempt to discharge the responsibilities of a parent.

Putative father

In the past few years the opinion has been growing in some quarters that a putative father has more rights regarding his illegitimate child than was formerly thought. So far as adoption is concerned his position was examined by the Court of Appeal in *Re M.* (*an Infant*) [1955] 3 W.L.R. 320; 99 SOL. J. 539, and it was held that the natural father of an illegitimate child is not a "parent" and therefore if he is not liable by virtue of any order or agreement to contribute to the maintenance of the infant his consent to the making of an order authorising the adoption of a child is not necessary. On examining many authorities and the Act itself, Denning, L.J., said that the word "parent" in an Act of Parliament does not include the father of an illegitimate child unless the context otherwise requires. The putative father has no rights at all so far as he could see, though no doubt he could apply for the child to be made a ward of court just as anyone else could. The father is too uncertain a figure for the law to take any cognizance of him except that it will make him pay for the child's maintenance if it can find out who he is. Everything in the Adoption Act pointed to the word "parent" being used in its legal sense so as to exclude the natural father.

Birkett, L.J., said that the word "parent" must be construed in the light of the sections of the Act itself, and the various sections pointed unmistakably to the fact that the father of an illegitimate child cannot be a parent within the meaning of the Act.

A further point that was considered by the court was the suggestion that the natural father was still a respondent to the application and should be heard on the merits of the adoption order. The court did not think this was correct, because he was only a respondent because it was thought his consent was necessary, and when it was found to be unnecessary he had no *locus standi* to intervene in the matter at all. That was so in that particular case, but by r. 9 (*d*) of the Adoption of Children (Summary Jurisdiction) Rules, 1949 and 1952, a juvenile court may issue a notice of the date and time for the hearing of an application to *any other* person (as well as every person whose consent is required, the welfare authority and adoption society) who in the opinion of the court ought to be a respondent to the application and such person shall be a respondent. There is a similar provision in the Adoption of Children (County Court) Rules, 1952, r. 9.

The Departmental Committee, after much consideration, did not think it is right for the putative father to have the same powers as the mother respecting consents to adoption, and recommends that the Act should be amended so that it should not be necessary for his consent to be obtained or dispensed with. He should, however, be consulted if he has materially contributed towards the child's maintenance or shown a genuine and continuing interest. The committee was of opinion that it is important that a father who has taken a genuine interest in his child should have an opportunity of making representations as a respondent to any application to adopt the child. This should not, of course, involve bringing the father (or alleged father) before the court as a general rule. It is recommended that it should be for the guardian *ad litem* to ascertain and report to the court whether the father has taken sufficient interest in the child to warrant his being made a respondent to the application.

Although not strictly relevant to this article, Roxburgh, J., held recently in *Re C.T. & J.T.* (*Infants*) [1956] 1 W.L.R. 1483; *ante*, p. 837, that magistrates' courts have no jurisdiction

under the Guardianship of Infants Acts in respect of illegitimate children on application by a putative father for custody (cf. p. 812, *ante*). It would seem desirable for there to be some amendment in the law extending custody provisions to illegitimate children.

Divorce and adoption

In *Crossley* v. *Crossley* [1953] 2 W.L.R. 765; 97 SOL. J. 249, Davies, J., adjourned a summons into court in order that some publicity might be given to a direction previously given by the President of the Divorce Division so that the expense and trouble of applying in the High Court for discharge of a custody order where adoption is being sought might be avoided. The direction is in the following terms: "Where a person or persons are desirous of adopting a child in respect of whom a custody order has been made in the Divorce Division of the High Court, the application can be dealt with in the ordinary way at a county court or court of summary jurisdiction notwithstanding the custody order, provided that the requirements of the Adoption of Children Acts are complied with. It is not necessary to obtain the discharge of the custody order before making the application. The adoption order, when made, extinguishes and supersedes the custody order and the child is treated thereafter as the child of the adopter or adopters." The Departmental Committee welcomed this.

No pressure

A consent to adoption must necessarily be given in full cognizance of the application and without any pressure of any kind on the person giving consent. In *Re P., an Infant, supra*, the guardian *ad litem* told the mother of an infant, who had intimated her intention to withdraw a consent, that the proposed adopters might make a claim for the maintenance of the child, who had stayed with them during the probationary period. The mother withdrew her consent but later consented. There was a careful investigation and interrogation by the judge who made the order. On appeal by the mother, the Court of Appeal was satisfied that the consent given was perfectly genuine and deliberate and at the time fully intended. The Master of the Rolls said that the statement made by the guardian *ad litem* to the mother was unjustifiable and regrettable and, if it had influenced the consent to any appreciable extent, it might well be that the result would be to vitiate that consent. On the whole, his lordship was satisfied that it did not. Denning, L.J., said that if there was any improper pressure leading to a consent or affecting it the court would interfere.

The Departmental Committee intimated that it was no less regrettable that a guardian *ad litem* should seem to take sides in the matter. It is improper for a guardian *ad litem* or any agent of his to influence, or even give the appearance of attempting to influence, the decision of any respondent whom he may interview. His duty is to make inquiries and to report the facts impartially to the court. As an officer of the court he should not bring any pressure to bear on any party.

Future legislation

The number of adoption orders granted in England and Wales was about 3,000 in 1927. In 1946 it was over 21,000, after which the number decreased and the average is now about 14,000 a year. It can be said that the Adoption Acts have worked well. The matter is so important that any improvement in the law now existing should not be delayed, and it is to be hoped that the recommendations of the Departmental Committee will be implemented as soon as possible. The report is lengthy and it has been possible to make but the briefest reference to its contents here. It is over two years since it was issued but in the interests of the welfare of children (to quote the report) some way may be found of sparing parliamentary time for the necessary future legislation.

J. V. R.

SETTLEMENTS, CHARITIES AND THE TOWN AND COUNTRY PLANNING ACT, 1954

IN this article it is proposed to consider a few problems which arise in the administration of a settlement or a charity in connection with the Town and Country Planning Act, 1954.

Settled land

It is provided in the Town and Country Planning (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38), para. 10, that where the right to make application for any payment under Pt. I of the 1954 Act (payments in respect of loss of development value, under cases A, B, C or D, or circumstances analogous thereto) or for compensation under Pt. II or Pt. V of the Act (in respect of future or past planning decisions) becomes exercisable by reference to an interest in land which is then subject to a "settlement," then—

(*a*) the right to make the application or claim is to be exercisable by the trustees of the settlement, and

(*b*) the principal amount of the payment and the interest thereon or the compensation (*plus* any interest payable in the case of Pt. V compensation under s. 46) is to be paid to the trustees of the settlement.

"Settlement" is not defined in the Act of 1954, nor, for that matter, in the Act of 1947, and it should therefore be understood in accordance with the ordinary language of conveyancers to refer not only to cases where land is held under a strict settlement and the land is settled land for the purposes of the Settled Land Act, 1925, but to include also personalty settlements where the land is held on trust for sale. (There are special provisions regulating cases of land subject to a rentcharge: see below.) If, however, there are for the time being no trustees of the settlement, these must be appointed in due form for the purpose of making the application or claim, and also for the purpose of receiving the money; they are, it seems, the only persons who can give a valid receipt to the Central Land Board or the Minister (as the case may be).

It will be noted that the interest element payable in addition to a Pt. I payment or a Pt. V claim is to be paid to the trustees, as well as the principal sum, and the interest is not to be treated as income—this is supported by the rules governing compensation under Pt. II, for here the "unexpended balance of established development value," against which a claim may be made, is to be regarded as being eight-sevenths of the value of the claim holding, no special treatment being given to the interest element (see s. 17). It is submitted that when any money is so received under Pt. I, II or V, the trustees of the settlement must hold it as capital money if

the land is settled land under the Settled Land Act, 1925, for by definition (see Settled Land Act, 1925, s. 117 (1)) "capital money arising under this Act"—which may be disposed of only in accordance with the Act—includes securities representing capital money, and by analogy, it is submitted, must also include these payments and compensation so received. In the case of personalty settlements, any sums received must be held by the trustees on the trusts and for the purposes of the settlement, in accordance with ordinary principles.

In the case of compensation moneys paid under Pt. III (including the extra payment due under s. 31 of the 1954 Act, or under s. 32 or s. 33, *ibid.*, or the *ex gratia* extra payment paid under s. 35, *ibid.*), these must be paid in the same manner as any other compensation moneys paid on a compulsory acquisition of land, and again they will be paid to the trustees of the settlement.

In the case of land subject to a rentcharge, Pt. III of the Regulations of 1955 will apply, and these make provision for both the rentcharge owner and the fee simple owner of the land subject to the rentcharge to make a claim for compensation under Pt. II or Pt. V of the 1954 Act, in a proper case. The fee simple owner is the one who must claim in the first instance, but the rentcharge owner also has a status in the event of the fee simple owner's default.

Charities

Land held on charitable trusts was exempted from the need to pay development charge under s. 85 of the 1947 Act, and in consequence no claim could be lodged in respect of loss of development value under Pt. VI of that Act, and consequently that land now has no "unexpended balance of established development value" against which a claim could be made under Pt. II or Pt. V of the 1954 Act. Other land held on charitable trusts on 1st July, 1948, but not then used for that purpose ("non-operational land") could also have had the benefits of s. 85 of the 1947 Act extended to it by Ministerial directions under the section—as these benefits might have turned into a *damnosa hereditas* by the effect of the 1954 Act, an opportunity was given in the latter Act for the trustees to revoke the s. 85 direction, on an application made before 1st July, 1955 (see 1954 Act, Sched. I, para. 12). When ascertaining whether or not a Pt. II claim could in future be made in respect of land owned by a charity (the time for lodging claims under the other Parts of the Act has of course now long passed), the following facts must first be ascertained:—

(*a*) Was the land "operational land" of the charity, or of another charity, on 1st July, 1948; if so it was automatically within s. 85, and the Minister could not have given any directions under s. 85 (5).

(*b*) If the land was "non-operational," were any Ministerial directions given, and, if so, have they since been revoked under the 1954 Act?

If charity land is subsequently compulsorily acquired, the compensation payable will be on the basis of market value (i.e., s. 51 (4) of the 1947 Act will not apply) for any permitted use, provided it was "operational land" of a charity on 1st July, 1948, or that Ministerial directions have been made under s. 85 (5) and not subsequently revoked under the 1954 Act, as above explained (1954 Act, s. 34 (1) and Sched. VI, paras. 6 and 8). If there is any doubt about the position of any particular land in this respect, the matter is to be determined in accordance with the procedure laid down in ss. 92 and 119 (2) of the 1947 Act (see 1954 Act, s. 67 (4)). Money paid in respect of ecclesiastical property must be paid not to the incumbent, but to the Church Commissioners (1954 Act, s. 67 (3)).

Repayment of compensation

In certain circumstances compensation paid under Pt. II or Pt. V, or under s. 59 of the 1947 Act (payments in respect of war-damaged land), may become repayable (1954 Act, ss. 29, 41, 46 and 57). In any such case, these payments may be financed out of capital moneys under the Settled Land Act, 1925, or the Universities and College Estates Act, 1925, and the financing of such payments may be by way of mortgage under those same Acts (see 1954 Act, s. 66 (2)). If further argument be needed, it is suggested that this provision reinforces the views taken above on the holding of moneys received under the 1954 Act as capital money.

J. F. GARNER.

THE ROAD TRAFFIC ACT, 1956: SOME PROBLEMS OF INTERPRETATION

THE provisions of this Act coming into operation on 1st October and 1st November, 1956, were briefly surveyed at p. 722, *ante*. No date has yet been fixed for the coming into operation of the other sections of the Act nor have any new regulations been issued. This article will not touch upon any of the parts which are not in force but will discuss problems arising under some of the sections which are now law. As other sections now in force do not give rise to any serious problems, they will not be discussed and this article will not therefore be a full survey of the new law.

Disqualification and special reasons

The changes mentioned at p. 722, *ante*, making it no longer compulsory to disqualify for insurance and "drunk in charge" offences, will mean that nearly all the numerous cases on "special reasons" can now be forgotten. Apart from second convictions for "drunk in charge" or dangerous driving and convictions for the rare offence of promoting speed trials on the highway, "special reasons" in relation to disqualification can arise in the future only on conviction for driving or attempting to drive a motor vehicle under the influence of drink or drug. The Road Traffic Act, 1956, has not altered the definition of "special reason" laid down in *Whittall* v. *Kirby* [1947] K.B. 194, and considerations of hardship, previous good character, the unlikelihood of the defendant offending again, the severity of the fine and the defendant's injuries do not individually or collectively amount to a special reason; it must still be one special to the offence and not to the offender. A sudden, unexpected emergency will generally be a special reason, however, and so will the fact that the defendant's intoxication was induced by the malicious act of another, e.g., surreptitiously putting gin in the vicar's lemonade (*Aichroth* v. *Cottee* [1954] 1 W.L.R. 1124; 98 SOL. J. 576; *R.* v. *Phillips* [1955] 1 W.L.R. 1103; 99 SOL. J. 727; *Chapman* v. *O'Hagan* [1949] 2 All E.R. 690).

The relaxation of the law as to compulsory disqualification has been accompanied by a tightening in another respect in that a disqualification can no longer be limited to the class or description of vehicle in use at the time of offence. Thus, a bus driver who is convicted of driving a motor cycle under the influence of drink must now be disqualified from driving all types of motor vehicles, including buses; formerly, the court had a discretion whether to confine the disqualification to motor cycles only. The former disqualification was first mentioned in the High Court in *Burrows* v. *Hall* [1950] 2 K.B. 476, where a disqualification limited to driving private motor vehicles was upheld without any discussion whether such limitation was in a proper form. In *Petherick* v. *Buckland* [1955] 1 W.L.R. 48; 99 Sol. J. 78, a disqualification limited to driving " 5-cwt. vehicles " was upheld as valid, though undesirable in form. In *West* v. *Jones* (1956), 120 J.P. 313, a disqualification limited to " driving motor cars for private purposes " was declared to be invalid and the High Court, on appeal by the prosecutor, substituted one limited to motor cars generally. The question whether a disqualification limited in some way is valid may still arise for a year or two yet in respect of persons subject to a limited disqualification imposed before the new law operated. Where such a person is prosecuted for driving in defiance of the disqualification, it may be that he can set up the defence that his disqualification is in a form which is bad in law and *ultra vires* and that therefore it is void. Certainly, as disobedience to an order of disqualification is an offence punishable with imprisonment, it is important that it should be in a clear and legally proper form, and it was held in *R.* v. *Graham* (1955), Crim. L.R. 319, that a disqualification expressed to run from the date of the offender's release from prison was invalid. He could raise the defence, it was said, that " the order disqualifying me was bad and therefore I am not liable to conviction." Again, if a disqualification has been expressed in vague or ambiguous terms, it might be that the defendant could urge that in favour of his acquittal; if documents such as notices to quit must be in precise terms, he can argue that orders imposing criminal liability must *a fortiori* be clear and unambiguous (cf. the cases on town planning enforcement notices).

A point which s. 26 (3) of the Road Traffic Act, 1956, has cleared up is that a person found guilty of aiding and abetting the commission of an offence for which the principal must be disqualified, e.g., driving under the influence of drink, does not have himself to be disqualified—although he may be, if the court thinks fit. The Act does not refer, however, to persons convicted of aiding and abetting another person to drive whilst the latter is disqualified; unless there are special circumstances, the principal must be sent to prison for that offence (*Lines* v. *Hersom* [1951] 2 K.B. 682). Whether the court must send the aider and abettor to prison also is not clear. A stipendiary magistrate recently sent a principal offender for this offence to prison for one day and fined him as well, which, if not strictly within the law laid down in *Lines* v. *Hersom, supra*, seems a sensible way of mitigating the harshness of that rule.

Warning of intended prosecution

Two points of statutory interpretation arise from the extension made to the Road Traffic Act, 1930, s. 21, by s. 30 of the Act of 1956. To consider them, it is necessary to set out the relevant sections wholly or in part.

Section 21 of the Act of 1930 provides:—

" Where a person is prosecuted for an offence under any of the provisions of this Part of this Act relating respectively to the maximum speed at which motor vehicles may be driven, to reckless or dangerous driving, or to careless driving he shall not be convicted unless (he was warned of the possibility of proceedings at the time or within fourteen days' notice is given to him or to the registered owner of the vehicle)."

In 1930 the offences mentioned in s. 21 could be committed only in respect of motor vehicles and both then and now only motor vehicles, not cycles or carts, could have a " registered owner."

Section 11 (1) of the Road Traffic Act, 1956, provides:—

" The following enactments, that is to say—

(*a*) [s. 11 (1) of the Act of 1930 (Dangerous &c. driving)],

(*b*) [s. 12 (1) of the same Act (Careless driving)],

* * * * *

(*e*) s. 21 of [the Act of 1930] (which requires the giving of warnings of proposed prosecutions) in so far as it relates to offences against the said ss. 11 and 12, but with the omission of the references to registered owners,

* * * * *

shall subject to the provisions of this section apply to persons riding bicycles and tricycles, not being motor vehicles, as they apply to the drivers of motor vehicles, and references in those enactments to motor vehicles, drivers and driving shall be construed accordingly."

There is nothing elsewhere in the section relevant to the point about to be discussed.

Section 30 of the Road Traffic Act, 1956, reads:—

" Section 21 of the Act of 1930 (which provides that a person may not be convicted of excessive speed, reckless or dangerous driving, or careless driving unless either warned at the time of the possibility of his being prosecuted or within fourteen days thereafter either summoned for the offence or notified that he is to be prosecuted) shall apply to offences under ss. 49 and 50 of that Act (which relate respectively to failure to obey traffic directions or to conform with instructions given by traffic signs and to leaving vehicles on roads in dangerous positions)."

The Road Traffic Act, 1956, received the Royal Assent on 2nd August, 1956, but did not immediately come into operation. The Road Traffic Act, 1956 (Commencement No. 1) Order, 1956, was issued in September, 1956, and brought ss. 11 and 30 into operation on 1st November, 1956, so that there was more than a month between the date on which s. 30 began to operate and the date when the police first (in theory) knew of the date of that section's operation.

Offences before 1st November, 1956

The first question is: Is an offender against s. 49 or s. 50 of the Road Traffic Act, 1930 (e.g., ignoring traffic lights or a " Halt " sign) who is prosecuted now for an offence committed before 1st November able to plead that the police did not comply with s. 21 in his case? The answer, it seems, is to be found when it is decided whether s. 30 of the Act of 1956 is retrospective as to procedure or not (Halsbury, 2nd ed., vol. 31, pp. 513 and 517). It is submitted that s. 30 does not disturb any existing rights, for the prosecutor has no " right " to a conviction once the offence is established in the sense that he has a " right " to compensation or continuance of a certain status; the section affects " procedure," in which no one has a vested right, for the warning is of the same

nature as the process which must be issued to bring the offender to court. If, then, the view that the requirement of a warning is a matter of procedure is correct, s. 30 operates retrospectively and the failure of the police to have given warning is fatal as well before as after 1st November. In *R.* v. *Jennings* [1956] 1 W.L.R. 1497; *ante*, p. 861, it was said that s. 21 was " purely procedural."

Some of the cases show considerable interference with a defendant's rights and it is no more unfair, then, if a prosecutor's position is altered to his prejudice also. For example, a person committed an offence in July; at that time the period within which he could be prosecuted for it was three months. Before the three months had expired, a statute extending the period to six months received the Royal Assent. The defendant was charged five months after the offence; it was held that the new statute related to procedure only and the prosecution was in time (*R.* v. *Chandra Dharma* [1905] 2 K.B. 335). In *Director of Public Prosecutions* v. *Lamb* [1941] 2 K.B. 89, the accused had committed offences in May. In June the penalty for those offences was increased and proceedings were begun in August. It was held that the higher penalties could be inflicted although the offences had been committed before they were increased. In *The Ydun* [1899] P. 236 a plaintiff's rights were extinguished; he had a cause of action against a public authority and his right of action was barred because the Public Authorities Act, 1893, imposing a six-month limitation, was held to be retrospective in that respect. The rule was stated thus by Blackburn, J., in *Kimbray* v. *Draper* (1868), L.R. 3 Q.B. 160: " . . . where the effect is to change the rights of parties it is not retrospective; but where it only changes the manner of procedure, it applies to actions pending as well as future."

Support for the view advanced comes from the presumption discussed in Odgers on The Construction of Deeds and Statutes, 1st ed., p. 191, that where a statute contains a section postponing its operation for a certain period, it is an indication that the Legislature intended it to have a retrospective action, because it gives time for proceedings to be taken in respect of causes of action already accrued. That learned author does not think that the presumption has much support in the decided cases, but some is found in *R.* v. *Leeds and Bradford Railway Co.* (1852), 21 L.J.M.C. 193. As stated, the operation of s. 30 of the Road Traffic Act, 1956, was postponed by the Act itself and by the Commencement Order, so that there has been time for the police to give the warnings. However, the view that s. 30 is retrospective is not advanced with complete confidence and no doubt the other side can be argued with force. A particular point in favour of the police is the unfairness to them if s. 30 is given retrospective operation; Mr. Chandra Dharma and Mr. Lamb at least had committed offences, while the police are endeavouring to enforce the law in proper cases. A recent case on the effect of the operation of a new statute on a current notice to quit is *Orman Bros., Ltd.* v. *Greenbaum* [1955] 1 W.L.R. 248; 99 Sol. J. 185, but, as that decision turned entirely on particular statutory provisions, it seems to be of little help. Happily, the passage of a few months will dispose of all likelihood of the point being raised.

Warning of intended prosecution to cyclists

The next question for consideration will not be resolved by effluxion of time, however. In view of the terms of s. 11 (1) (*e*) of the Road Traffic Act, 1956, providing that s. 21 of the Act of 1930 shall apply to persons riding cycles and tricycles " *in so far as it relates to (dangerous and careless riding)*," does a prosecutor have to comply with s. 21 where a cyclist has disobeyed a traffic sign or police signal or left his machine in a dangerous position, in breach of ss. 49 and 50 of the Act of 1930? Prior to the Act of 1956, s. 21 applied only in respect of motor vehicles, but ss. 49 and 50 have always applied to all types of vehicle including horse-drawn carts and cycles. The effect of s. 30 of the new Act seems to be to apply the warning provisions of s. 21 to all persons who disregard traffic signs or police signals or otherwise contravene ss. 49 and 50, whether motorists or not. On the other hand, s. 11 (1) (*e*) of the Act of 1956 says plainly that, in relation to cyclists, s. 21 applies " in so far as it relates to (dangerous and careless driving) " and this suggests strongly that it is excluded in relation to other offences. The result may be anomalous in that a carter must have notice but a cyclist need not but, where the language of a statute is plain, then it should be construed accordingly, whatever one may think Parliament may have intended. Indeed, one cannot say for certain that Parliament even intended that warning under s. 21 should be given to carters and barrow-boys who disobey ss. 49 and 50; the fact that cycles have no registered owners is picked up in s. 11 (1) (*e*) but in s. 30 of the Act of 1956 there is no reference to the fact that carts and barrows likewise have no registered owners. From this it can be argued, though not very strongly, that, since s. 21 allows service of the warning notice on the registered owner as well as on the accused himself, it can apply only in respect of vehicles which have registered owners, viz., motor vehicles, so that the extension made by s. 30 applies only in respect of motor vehicles.

Can any presumption arise from the fact that s. 11 (1) (*e*) occurs earlier in the Road Traffic Act, 1956, than s. 30? The rule is stated thus in Halsbury, 2nd ed., vol. 31, p. 484:—

> " Where two co-ordinate sections are apparently inconsistent, an effort must be made to reconcile them. If this is impossible, the latter will generally override the earlier, but a particular enactment, wherever found, must be construed strictly as against a general provision."

Section 30 may then override s. 11 (1) (*e*) by virtue of its later place in the Act but this will be so only if the two sections are quite irreconcilable. It is submitted that they are not irreconcilable at all, and that the plain words of s. 11(1)(*e*), on the contrary, override s. 30 in relation to cycles and tricycles.

Thus, there are three possible ways of interpreting the new provisions as to warning of intended prosecution in relation to offences under ss. 49 and 50 of the Road Traffic Act, 1930, viz.:—

(1) warning is required for all types of vehicles, carts and cycles as well as motors; or

(2) warning is required for carts and motor vehicles and not for pedal cycles and tricycles; or

(3) warning is required for motor vehicles only.

The present writer favours the second interpretation as being most consistent with the words of the statute, but it is appreciated that the first interpretation can also be argued with some confidence. Perhaps the consolidation of the Road Traffic Acts, promised for 1957, will clear up the matter.

Causing death by dangerous driving

Section 8 (1) of the Road Traffic Act, 1956, provides that any person who causes the death of another person by driving a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public shall be liable to five years' imprisonment; the offence is triable only at Assizes. The reasons for introducing this offence were that the Government

were concerned at the number of acquittals of persons accused of " motor manslaughter " ; this was attributed partly to the difficulties which juries must have found in distinguishing between manslaughter and dangerous driving, with resultant acquittals for both offences. " Motor manslaughter " will now be charged only if the offence is " near murder " (e.g., motor bandits running down a policeman), and it is to be hoped that the confusion caused in the minds of the jurors, if it did lead to acquittals, will no longer be present when an offence under s. 8 alone is charged. Seemingly now all that the prosecutor need prove is that the accused drove recklessly or dangerously (see *ante*, p. 500, as to what amounts to reckless or dangerous driving) and that such driving caused a death.

It may be argued, however, that s. 8 (4) has provided material for the introduction of side issues which so far have been absent from criminal trials but now may lead to just as much confusion in jurors' minds as before. It reads :—

> " If upon the trial of a person for an offence against this section the jury are not satisfied that his driving was the cause of the death but are satisfied that he is guilty of driving as mentioned in subs. (1) of this section, it shall be lawful for them to convict him of an offence under s. 11 of the Act of 1930, whether or not the requirements of s. 21 of that Act (which relates to notice of prosecutions) have been satisfied as respects that offence."

What are jurors going to make of the requirement that they may convict of the lesser offence of dangerous or reckless driving (which carries imprisonment for two years) if " not satisfied that his driving was the cause of the death " ? Normally, in England, contributory negligence of the deceased is no defence to a charge of homicide (see Archbold's Criminal Pleading, Evidence and Practice, 33rd ed., p. 949) ; likewise, if a wound turns to gangrene or fever and the victim dies of the gangrene or fever or if the wound becomes fatal from the refusal of the party to undergo a surgical operation or if death results from an operation rendered advisable by the act of the prisoner, this is still homicide (*ibid.*, p. 928). There was a recent instance, however, of the mistakes made at the hospital in treating a man who had been stabbed leading to a conviction for murder by the stabber being quashed, as no direction had been given to the jury as to the probable cause of death (*R.* v. *Jordan* (1956), *The Times*, 22nd August). Will juries now be bemused by issues being introduced as to whether the deceased's own negligence in crossing a road without looking was " the cause of the death " or whether the failure of the doctor to give a particular kind of treatment or the delay in the arrival of the ambulance was a *novus actus interveniens* reducing the charge—and the punishment ?

It is submitted that s. 8 (4) will not be so interpreted, firstly because the courts are unlikely to introduce so fundamental a change in the law of homicide unless the statute clearly and unambiguously requires it. The subsection can quite properly be interpreted as being intended for cases like *R.* v. *Jordan*, *supra* (victim dying from mistaken treatment rather than from the accused's actions), or possibly where the victim does not die within a year and a day. Further, it can be interpreted as being concerned merely with the matter of notice of intended prosecution, so that an important alteration in the common law should not be introduced by way of a sidewind, as it were.

Two further matters arise in relation to s. 8 of the new Act. First, may the spouse of the accused be called as a witness for the prosecution where the deceased was under seventeen ? The Children and Young Persons Act, 1933, s. 15, as read with Sched. I, allows the spouse to testify, if he or she is willing, where there is a change of (*inter alia*) manslaughter of, or " any other offence involving bodily injury to a child or young person." The Factories Act, 1937, s. 133, refers to a person being killed or suffering bodily injury, which suggests that " bodily injury " may not include death. Obviously, however, there must be bodily injury even where instantaneous death results (cf. *Morgan* v. *Scoulding* [1938] 1 All E.R. 28) and, further, in the Road Traffic Acts themselves, the terms " injury " and " personal injury " are used in ss. 22 and 40 (2) of the Act of 1930 as obviously including death. To hold otherwise in relation to s. 22, for example, would mean that, while a motorist must stop if he injures a pedestrian, he need not stop if he has killed him. It is submitted, therefore, that a spouse is a competent witness for the Crown, where the victim was under seventeen, in proceedings under s. 8. Where the charge is dangerous driving alone and not under s. 8, the defendant's spouse is not a competent witness for the prosecution even though a child has been killed (*Parson* v. *Tomlin* (1956), 120 J.P. 129, but as pointed out *ante*, p. 426, no reference was made in that case to s. 15 of the Children and Young Persons Act).

The second question as to s. 8 of the new Act is whether the victim's dying declaration is admissible in evidence. So far, dying declarations have been admissible (unless admissible on other grounds, e.g., course of duty) only in trials for murder and manslaughter, but one of the grounds for their admissibility is " necessity, for the victim being generally the only eye-witness to such crimes, the exclusion of his statement might defeat the ends of justice " (Phipson's Manual of Evidence, 7th ed., p. 133). It is believed that such declarations would be equally admissible in evidence even though there was a cloud of living witnesses as well. The considerations which render a dying declaration admissible in trials for murder and manslaughter do not seem to differ from those applicable in a trial under s. 8, and it is submitted that a dying declaration is admissible in proceedings under s. 8 to the same extent as in charges of homicide.

In charge of a motor vehicle under the influence of drink

As originally enacted, s. 15 of the Road Traffic Act, 1930, penalised those found guilty of driving or attempting to drive or being in charge of a motor vehicle under the influence of drink or drug to such an extent as to be incapable of having proper control thereof. The section has been extended to those riding (but not those attempting to ride) pedal cycles and tricycles under such influence ; a cyclist attempting to ride or being in charge will still be punishable under the Licensing Act, 1872, s. 12. The words " when in charge of " in s. 15 of the Act of 1930 have now been repealed and the code relating to offences of being in charge of motor vehicles under the influence of drink or drug is now found in s. 9 of the Road Traffic Act, 1956.

The law relating to driving or attempting to drive motor vehicles under such influence has not been altered by the new Act save that the defendant is now liable to heavier penalties and to be ordered to take a driving test. If he is accused of being in charge of a motor vehicle, however, special defences will be available to him and, even if convicted, he will not be liable to such heavy penalties nor to automatic disqualification on first conviction.

The special defences in cases of being in charge arise under the proviso to s. 9 (1), which says that a person shall be

deemed for the purposes of s. 9 not to have been in charge if he proves—

(1) that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as he remained unfit to drive ; and

(2) that between his becoming unfit to drive and the material time he had not driven the vehicle on a road or other public place.

Possibly some prosecutors will now charge the defendant with attempting to drive rather than with an offence under s. 9. There have not, it is believed, been any decisions on the meaning of " attempting to drive " but, to prove the attempt, the court must surely be satisfied that the defendant intended to drive the vehicle. If he proves that he did not intend to drive, e.g., that the reason for his efforts to start the engine was merely to keep it warm, it is submitted that he should be acquitted as there was no attempt to " drive " it.

The term " drive " can include not only moving forward under mechanical power but also running downhill or being pushed without the engine being started in either case (*Saycell* v. *Bool* [1948] 2 All E.R. 83 ; *Shimmell* v. *Fisher* [1951] 2 All E.R. 672 ; *R.* v. *Kitson* (1955), 39 Cr. App. R. 66). Presumably " driving " in proviso (1)—" no likelihood of his driving the vehicle "—therefore means causing the vehicle to move forward by going downhill or even, possibly, by being pushed ; it will not necessarily be a conclusive defence that the rotor arm had been removed, so that the engine could not be started.

The defences arising under the proviso to s. 9 (1) can obviously give rise to many hypothetical circumstances for discussion. To discuss hypothetical cases would make this article far too long, but the language used in the proviso requires consideration. " The material time " presumably means the time when the defendant first became unfit to drive—or, more likely, the time when the prosecutor can first show that he was unfit to drive. It will often be the time when the police first come on the scene. The defendant must show that at that time " the circumstances were such that there was no likelihood of his driving the vehicle " so long as he remained unfit to drive. His intention, so far as it can be ascertained from his own evidence to the court and his actions and declarations at the material time, will almost always be of the greatest relevance, but one can visualise cases where, even though the defendant intended to drive, it was unlikely that he would have driven, e.g., where the rotor arm of a lorry, too heavy to move by pushing, had been removed so that there was no likelihood of it being shifted at all, or where his friends show that the defendant would have been forcibly prevented by them from driving. Presumably the courts will give short shrift to a defence that the intervention of the police was a circumstance showing that there was no likelihood of the defendant driving whilst unfit, but it may be that logically such a defence can be raised where the police have deliberately set out to catch a man. For example, a constable sees a notorious tippler park his car outside a public house at 9.15 p.m. and go inside, apparently quite sober. The constable decides to keep a special and continuous watch on this car, in the expectation of making an arrest, and at 10 p.m. the driver emerges from the bar drunk, and seeks to enter his car. The constable, who is waiting for him, arrests him and later admits, in court, that the driver would never have been allowed to get in his car if he appeared intoxicated. The driver submits to the court that therefore the circumstances were such that there was no likelihood of his driving whilst unfit. As the examiners say : Discuss. The law of larceny and receiving certainly affords instances of traps set for the accused resulting in his acquittal.

The second proviso to s. 9 (1) is clearly designed to help drivers who have stopped when they have realised their unfitness to drive after setting out in a fit condition. It may be that the prosecutor will be able to show from the defendant's advanced state of intoxication that he must have been well under the influence of drink when he started his journey but, where the defendant is only mildly intoxicated, it will often be a difficult question for the court to say what his state was before he stopped. Evidence from his companions during the journey and from those who saw how much he had drunk or what his condition was before he started will be useful ; one suspects, however, that medical men will be loth to express opinions on what a patient's condition was an hour or more before the examination unless he is grossly intoxicated.

The burden of proof under the proviso to s. 9 (1) will lie, it is submitted, on the defendant ; all that the prosecutor need do is to prove that the defendant was in charge and under the influence of drink or drug to the requisite extent. Presumably, the defendant need not prove his defence beyond all reasonable doubt, so long as he satisfies the court of the probability of that which he is called on to establish (cf. *R.* v. *Carr-Briant* [1943] K.B. 607).

The law as to the meaning of " in charge " has not been altered by the new Act. It is discussed at 98 Sol. J. 275 and it is pointed out there that in England a person is deemed to remain in charge until he has given his vehicle into another person's charge (*Leach* v. *Evans* [1952] 2 All E.R. 264 ; *Haines* v. *Roberts* [1953] 1 W.L.R. 309). Lord Goddard, C.J., has, however, since said, in summing up to a jury, that a vehicle can be " abandoned altogether." In both the cases cited the defendant was a few feet away from his vehicle at the time and had " made oath " and said that he was going to drive it. One can easily think of different circumstances, and it may be that the question of temporary relinquishment, leading to a cesser of being in charge, is still arguable before the English courts. In nearly all cases, however, it is suggested that reliance on the proviso to s. 9 (1) (no likelihood of driving whilst unfit) would be a safer and better defence. If the defending solicitor takes the point that the prosecutor has not proved that the defendant was in charge and he takes it at the close of the prosecutor's case, before any defence is gone into under the proviso, he may find that if he has succeeded, an appeal by case stated is soon lodged against his client. If the appeal is allowed and the case returns to the magistrates, it may be that the proviso will be found to afford a good defence and the client will not unnaturally ask why this defence could not have been raised originally, instead of involving him in the delay and expense of an appeal. If the defence under the proviso is raised at the first hearing, the point is still open to the defendant that he was not in charge, should that defence not be accepted.

Persons accused under s. 9 (1) may claim to be tried by jury. On first conviction under s. 9, it is at the court's discretion whether or not to disqualify from driving and for what period ; on second or subsequent conviction (and a previous conviction for driving or attempted driving of a motor vehicle under the influence of drink or drug counts as a previous conviction under s. 9), the court must disqualify for at least twelve months, unless there are special reasons.

G. S. W.

THE LANDLORD'S DILEMMA

THE possibility of an ambiguous outcome of the litigation between Austin Reed, Ltd. (the tenants), and Royal Insurance Co., Ltd. (the landlords), was foreshadowed when, after arriving at a decision on the main issue in favour of the landlords on 8th May last, Danckwerts, J., was asked to curtail the normal time for an appeal from the order from the period of six weeks to one week (*In re 20 Exchange Street, Manchester; Austin Reed, Ltd.* v. *Royal Insurance Co., Ltd.* [1956] 1 W.L.R. 765; *ante*, p. 450). The learned judge said that it appeared to him that under the new Rules of the Supreme Court he had not any power to abridge the time for an appeal, but continued: "I would like to add that, if I had any such power under R.S.C., Ord. 64, r. 7, I doubt whether I should exercise it in a case of this kind. The possible hardships to which counsel for the landlords referred seem to me to be hardships created by the Landlord and Tenant Act, 1954, and by matters with which I ought not to interfere, since the Legislature has thought fit to provide for certain consequences in cases of this kind." The "consequences" in this case are now known, and, though they are not entirely unexpected, they are nevertheless remarkable.

Practitioners are doubtless now reasonably familiar with the provisions of Pt. II of the Act, and it is not necessary to introduce the case in great detail. Suffice it to say that in May last Austin Reed, Ltd., as tenants made an application under s. 24 in the Chancery Division for the grant of a new tenancy for a period commencing as from 14th April last and to expire on 30th November last. But Danckwerts, J., who heard the application, decided that the landlords were able to establish an intention to demolish and reconstruct the premises comprised in the holding, these being some of the grounds of opposition specified in s. 30 (1), the establishment of which (under s. 31 (1)) debars the court from granting a new tenancy.

On an appeal by Austin Reed, Ltd., heard on 18th July, the latter decision was upheld by the Court of Appeal, which also refused leave to appeal to the House of Lords. No steps were taken to obtain leave to appeal from the Appeals Committee of the House of Lords.

Time for expiry of tenancy

On 10th October, in a fresh application in which Austin Reed, Ltd., again were plaintiffs and the insurance company defendants, the court was asked to construe the provisions of the Act and say when in the events which had happened the tenancy would expire ([1956] 1 W.L.R. 1339; *ante*, p. 801).

Section 64 (1) of the Act provides that in a case "where (*a*) a notice to terminate a tenancy has been given under . . . Part II of this Act or a request for a new tenancy has been made under Part II thereof, and (*b*) an application to the court has been made under . . . the said Part II . . . and (*c*) apart from this section the effect of the notice or request would be to terminate the tenancy before the expiration of the period of three months beginning with the date on which the application is finally disposed of, the effect of the notice or request shall be to terminate the tenancy at the expiration of the said period of three months and not at any other time." It was not disputed in this case that that provision applied.

When can an application be said to be "finally disposed of"? Subsection (2) of s. 64 says that it is "the earliest date by which the proceedings on the application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired, except that if the application is withdrawn or any appeal is abandoned the reference shall be construed as a reference to the date of the withdrawal or abandonment." The decision in this case depended on when the application of Austin Reed, Ltd., for the grant of a new tenancy was finally disposed of.

The respective contentions of the litigants were, on the one hand, that the application for a new tenancy was finally disposed of on 18th July, when the Court of Appeal arrived at its decision and refused the tenants leave to appeal to the House of Lords, and, on the other, that the application was not finally disposed of until the time for lodging a petition asking for leave to appeal from the Appeals Committee of the House of Lords—that is to say, one month thereafter—had expired. More than once in the course of the case it was stressed that it had happened on a number of occasions that, even though the Court of Appeal refused leave to appeal from its decisions, leave to appeal was granted by the Appeals Committee; and, moreover, that in such cases the subsequent appeals were by no means always unsuccessful.

Harman, J., to whom it fell to determine this final point ("final," because the parties had agreed to accept his ruling and not to appeal against it), said in his judgment that it was no doubt an important matter and was not easy to determine. He thought that when the section said "finally disposed of" it meant what it said: certainty was essential: it could not be said that that time had arrived until the month's period for the petition for leave to appeal had expired. In these circumstances he declared that the tenancy expired three months after 18th August, that is to say, on 18th November.

Leaving it late

Thus the outcome of the protracted proceedings was that tenants who applied for a tenancy expiring on 30th November obtained by the operation of the provisions of the Act a "statutory" tenancy until 18th November. It would seem that if leave to appeal had been sought from the Appeals Committee and had not been rejected until 30th August, the tenants would have got exactly the tenancy which they had been asking for. If leave to appeal had been granted the tenants would have had six months from the date of the order appealed from in which to appeal and the tenancy would thus have run for nine months from 18th July. Whether that fact was what determined the tenants not to seek leave to appeal from the Appeals Committee is not known. But all that they were asking for was a tenancy to continue until other accommodation was ready for their occupation.

It would seem, therefore, that in some cases it is possible under the Landlord and Tenant Act, 1954, for the tenant to get (as it were) from the left hand what has been refused by the right hand; or more; or less—at a cost. P. H.

At the annual meeting of the Yorkshire (West Riding) branch of the MAGISTRATES' ASSOCIATION at Leeds Town Hall on 17th November, the following officers were elected: President, Dr. Terry Thomas (Leeds); chairman, Sir Bertram Wilson (Tadcaster); deputy chairman, Mr. E. C. Stonehouse (Wakefield); hon. treasurer, Councillor George Turner (Brighouse); hon. secretary, Mr. T. C. Feakes (Clerk to the Leeds City Justices); and hon. auditor, Councillor C. Harrison (Bradford).

MIXED CHARITIES

In November and December, 1924, the SOLICITORS' JOURNAL *published a series of articles by the late Mr. A. H. Withers on this subject, which were later republished in booklet form. Although the booklet is out of print, demand for it still continues, and we therefore reprint here Mr. Withers' original contributions, followed by an up-to-date commentary by Mr. Spencer G. Maurice.*

I.—Introduction

THE provisions of s. 62 of the Charitable Trusts Act, 1853, relative to charities " wholly maintained by voluntary contributions " and to " mixed charities," i.e., charities " maintained partly by voluntary subscriptions and partly by income arising from any endowment," and the cases thereon, have always been difficult to understand. The decision in *Re Clergy Orphan Corporation* [1894] 3 Ch. 145 overruled the reasoning of the prior cases, rendering them of little authority (if any), and laid down various clear principles. Subsequently came eleven cases, some of which are very difficult to understand or to reconcile with other cases. The actual position was anything but clear, when the Court of Appeal by their decision in *Re Child Villiers' Application* [1922] 1 Ch. 394 laid down new law, threw new light on the situation, and recognised in their judgments that their decision might be inconsistent with earlier cases.

It seems to the writer that the only way to ascertain the present position is to annotate the relevant parts of s. 62 with the result of the decisions (back to and including the *Clergy Orphan* case) read in the light of the decision in *Re Child Villiers' Application*, and to summarise the result. These articles slightly amplify notes made in an attempt to do this. They deal incidentally with charities " wholly maintained by voluntary contributions " because, without doing so, it is hardly possible to deal properly with the cases relative to mixed charities.

It is with great diffidence that the writer expresses the views set forth. The whole subject is one of great difficulty and one on which any views must necessarily be tentative. Moreover, he frankly admits that in many instances he does not understand the remarks of the learned judges or arguments addressed to them. It seems to him (presumably, quite incorrectly) that much of the obscurity is due to the fact that the precise effect of the *Clergy Orphan* case has often been forgotten or misunderstood, and that arguments, based on the fact that the proceeds of sale of property can or cannot be used as income, are (since the *Clergy Orphan* case) wholly irrelevant save on the one point—whether a donation to a mixed charity is or is not exempt from the jurisdiction of the Charity Commissioners. He realises that when one disagrees with a reported decision one is usually wrong. Still, views must be formed, and endeavour has been made to show how far the writer's views are inconsistent with decided cases or are not covered by authority. It is hoped that, even if most of the views expressed by the writer are wrong, these articles will afford a convenient introduction to the law on the subject.

In actual practice, the decisions to be considered are of practical importance when trustees of a charity propose to sell, mortgage or lease land belonging to the charity. *Prima facie* the trustees must, under s. 29 of the Charitable Trusts Amendment Act, 1855, obtain the consent of the Charity Commissioners (or Board of Education) to the sale, etc. No such consent is necessary where the trustees have power to sell, etc., under the authority of (1) an Act of Parliament, or (2) a court or judge of competent jurisdiction, or (3) under a scheme legally established,[1] or where some other special statutory exemption exists—e.g., where the property is a building registered as a place of meeting for religious worship with the Registrar-General of Births, Deaths and Marriages in England and Wales, and *bona fide* used as a place of meeting for religious worship.

If no other ground for exemption exists, the trustees must get the consent unless they claim and can show that the consent is unnecessary, because the charity is wholly maintained by voluntary contributions or because the property is or represents a specially favoured species of property belonging to what is called " a mixed charity."

In order to ascertain the validity of the claim, it is necessary to ascertain the relevant facts, and then to apply the law. Such law is that with which these articles deal.

An explanatory introduction to the law has recently been given by Warrington, L.J. :—

> " The Act of 1855 imposes on all charities subject to the Charitable Trusts Acts this restriction, that it shall not be lawful for the trustees or persons acting in the administration of any charity to make any sale without certain sanctions, and in particular without the approval of the Board. It is further provided by s. 47 of the Act of 1855 that nothing in the Act shall extend to any of the cases which by s. 62 of the principal Act, that is, the Act of 1853, are excepted from the operation thereof.
>
> " There are two ways by which s. 62 of the Act of 1853 relieves certain charities and certain properties of certain charities from the jurisdiction and control of the Board. First, it provides that the *Act*, taking the words of the section, *shall not extend to certain charities at all. Secondly*, it provides that *certain property belonging to certain charities* shall not be subject to the jurisdiction and control of the Board.
>
> " We have, therefore, two questions to decide, first, whether the charity in question is one to which the Act does not extend at all, and, secondly, whether the property in question is property which under the provisions of the Act is not subject to the jurisdiction and control of the Board."[2]

This passage, in which the italics are the writer's, seems most suggestive. It seems to point out that the Act does not apply at all to a charity or its property whilst the charity is " wholly maintained by voluntary contributions " : but that the Act applies to such a charity and all its property as soon as it ceases to be so wholly maintained. It also seems to point out that the Act applies to all the property of a " mixed charity," except so far as the property is or represents *certain* exempted property of a mixed charity. If this view be correct, as would seem to be the case, the passage above quoted throws new and important light on the statutes and decisions now to be considered.

II.—Charities wholly maintained by Voluntary Contributions

The Charitable Trusts Acts do *not* apply to—

> " any institution, establishment or society for religious or other charitable purposes, or to the auxiliary or branch associations connected therewith, *wholly maintained by voluntary contributions.*"[3]

N.B.—" *Contributions* " are not the same as " *subscriptions.*" A charity, to be exempted under this heading, must be " a charity which has no invested endowment yielding an income for its support, but is dependent on the gifts of the benevolent, whether recurrent or occasional, and whether *inter vivos* or by will."[4]

1 This does not include the deed which founds the charity (*Re Mason's Orphanage and London & North Western Railway Company* [1896] 1 Ch. 596), or a Royal Charter (*A.-G.* v. *National Hospital for the Paralysed, etc.* [1904] 2 Ch. 252).

2 *Re Child Villiers' Application* [1922] 1 Ch. 394, at p. 409.
3 Charitable Trusts Act, 1853, s. 62.
4 *Re Clergy Orphan Corporation* [1894] 3 Ch. 145, at p. 150, C.A.

"Voluntary contributions appears to me to be a wide term which includes contributions *inter vivos*, and contributions by will, and subscriptions, in the nature of annual, or monthly, or other periodic payments; and the case contemplated is where the society is maintained wholly by contributions of that sort, and has no income or other property, outside the ambit of the voluntary contributions, upon which to depend for maintenance."[5]

The initial gift, founding a charity, is not a voluntary contribution.[6]

A charity is not so wholly maintained, if it has freehold premises used for the purposes of the charity, whether producing income or not.[7] The reasoning of this is not clear, for on the same principle the ownership and user of furniture ought logically to have the same result.

If the charity has no such freehold premises and no income from endowment, it seems immaterial that the charity receives payments from scholars and grants from the Board of Education or out of local rates.[8]

Lands purchased by such a charity out of voluntary subscriptions and the proceeds of a bazaar—such moneys being legally applicable for the general purposes of the charity—have been held to be *exempt*, provided the lands purchased can be sold, and the proceeds dealt with for the general purposes of the charity.[9] But there is no such exemption where, under a deed by which trusts are declared of the land, the proceeds of sale cannot be used as income—even if the trust deed contains a power of revocation.[10]

It does not appear from the Act, or the decisions on the Act, how it comes to be material whether or not the proceeds can be used as income, or how the exemption arises at all in the case of purchased lands. Whether the proceeds can be used as income or not seems to be absolutely irrelevant under s. 62, except as one of the two points on which the exemption of a *donation or gift* to a *mixed* charity depends. As soon as the lands are purchased, the exemption enjoyed by a charity wholly maintained by voluntary contributions seems to go. As the charity is not "mixed" at the date of purchase, the exemptions in the case of mixed charities are not applicable.

The case of such a charity acquiring by gift or purchase land which produces no income and is not occupied by the charity—e.g., vacant lands given for the purpose of buildings to be erected by and for the charity—has not been considered. Possibly the ownership of such land may for some period not prevent the charity being wholly maintained by voluntary contributions—but, if so, it may be difficult to say precisely at what date or by reason of what event the charity ceases to be wholly maintained by voluntary contributions.

The case of leasehold land acquired by a charity is another case that has not been considered. Presumably, a tenancy at a rack rent would not, but the acquisition of long leaseholds held at a rent less than a rack rent would, cause the charity to cease to be wholly maintained by voluntary contributions. A tenancy at a rack rental may become a beneficial one, owing to building on the land or other causes; and then questions may arise whether, and, if so, when, the charity ceases to be wholly maintained by voluntary contributions.

Effect of Cessation of Exemption

If such a charity ceases to be wholly maintained by voluntary contributions, it may have—

(i) (possibly) land acquired before such cessation;
(ii) land the acquisition of which causes such cessation;
(iii) land acquired before the charity becomes mixed.

Notwithstanding the decision of Neville, J., above referred to, it is submitted as fairly clear that all such land comes, and must always remain, under the jurisdiction of the Charity Commissioners (or Board of Education) even if the charity becomes mixed.[11] The only exceptions possible are on totally different grounds—e.g., buildings registered for public worship.

III.—Mixed Charities

Section 62 of the Charitable Trusts Act, 1853, provides:—

"Where any charity is maintained partly by voluntary subscriptions and partly by income arising from any endowment, the powers and provisions of the Act shall, with respect to such charity, extend and apply to the income from endowment only, to the exclusion of voluntary subscriptions, and the application thereof.[12]

"And no donation or bequest unto or in trust for any such charity as last aforesaid, of which no special application or appropriation shall be directed or declared by the donor or testator, and which may legally be applied by the governing or managing body of such charity as income in aid of the voluntary subscriptions, shall be subject to the jurisdiction or control of the said Board, or the powers or provisions of this Act."

The date for ascertaining whether a charity is "mixed" or not, and whether the donation or bequest is exempt or not, is the date of the donation or bequest.[13] This point seems to have been overlooked in the cases decided before the year 1922. The subsequent cessation of subscriptions seems to be immaterial.[14]

For the exemption to apply, the charity must at the date of the donation or bequest be maintained:—

(i) Partly by voluntary subscriptions[15] however small.[16]

The words "voluntary subscriptions" are "used in a popular sense and denote recurring gifts repeated annually or otherwise with more or less regularity."[17]

(ii) Partly by "income arising from any endowment," which words mean (*quaere* include) "income derived from any invested funds belonging to the charity."[18]

5 *Re Orphan Working School and Alexandra Orphanage's Contract* [1912] 2 Ch. 167, at p. 176, Parker, J.

6 *Re Richard Murray Hospital* [1914] 2 Ch. 713, Joyce, J.; *Re Child Villiers' Application* [1922] 1 Ch. 394, at pp. 404 and 410, C.A. The decision in *Pease* v. *Pattinson* (1886), 32 Ch. D. 154 (funds for relief of sufferers by an accident at a colliery), seems to be inconsistent with these decisions.

7 *A.-G.* v. *Mathieson* [1907] 2 Ch. 383, C.A.

8 *Re Society for Training Teachers of the Deaf and Whittle's Contract* [1907] 2 Ch. 486, Neville, J.
Lindley, M.R., in the *Stockport* case [1898] 2 Ch., at p. 687, expressed doubt as to this.

9 *Re Society for Training Teachers of the Deaf and Whittle's Contract, supra.*

10 *Re Stockport Ragged Industrial & Reformatory Schools* [1898] 2 Ch. 687, at p. 700, *per* Chitty, L.J.; *A.-G.* v. *Mathieson* [1907] 2 Ch. 383, C.A. It is impossible to tell from the facts given in the report of the latter case whether at the date of the gift the charity was "mixed" or not. See remarks of Cozens-Hardy, M.R., at p. 394.

11 See the extract given on p. 897 from the judgment of Warrington, L.J., in the *Child Villiers* case.

12 Judging from the decisions, this provision is not material on the matters here dealt with, except for the purpose of showing what "any such charity" in the next sentence means. But the exact effect of this provision has never been properly considered. See Tudor on Charities, 4th ed., p. 564, and the observations of North, J., in *Re Corporation of the Sons of the Clergy and Skinner* [1893] 1 Ch. 178, at p. 184.
It is suggested in Tudor that the word "only" is used, not for the purpose of distinguishing income from capital, but for the purpose of distinguishing income from an endowment from income derived from subscriptions.

13 *Re Child Villiers' Application* [1922] 1 Ch. 394, C.A.; *Re Shakespeare Memorial Trust* [1923] 2 Ch. 398, Lawrence, J.

14 *Governors for Relief of Poor Widows, etc., of Clergymen* v. *Sutton* (1860), 27 Beav. 651, at p. 662, Romilly, M.R.; and see the observations in *Re Child Villiers' Application, supra*, at pp. 407 and 412.

15 *Re Gilchrist Educational Trust* [1895] 1 Ch. 367, Kekewich, J.; and see cases in 13.

16 *A.-G.* v. *Foundling Hospital* [1914] 2 Ch. 154, Joyce, J.

17 *Re Clergy Orphan Corporation* [1894] 3 Ch. 145, at p. 151, C.A.

18 *Ibid.* "Invested funds" is hardly a correct description of freehold ground rents given to the charity.

Section 66 of the Charitable Trusts Act, 1853, provides that " endowment " shall " mean and include all lands and real estate whatsoever, of any tenure, and any charge thereon, or interest therein, and all stocks, funds, moneys, securities, investments, and personal estate whatsoever, which shall for the time being belong to or be held in trust for any charity, or for all or any of the objects or purposes thereof."

Endowment means " all property of every description belonging to or held in trust for a charity, and whether held upon trusts or conditions which render it lawful to apply the *capital* to the maintenance of the charity, or upon trusts which confine the charitable application to the *income*."[19] The decision as to the meaning of the word " endowment " is of the utmost importance, for it is on this point that the reasoning of the cases prior to the *Clergy Orphan Case* was overruled by the latter case ; and the writer ventures to think the obscurity of the later decisions is due to the words here quoted being overlooked, and to the erroneous idea (which ought not to have been entertained after the *Clergy Orphan* case) that all " endowment " comes under the jurisdiction of the Charity Commissioners, and that the test whether property is " endowment or not " is whether its capital can be applied as income.

A house occupied by the charity and producing no income is " an endowment,"[20] but probably the charity is not being " maintained partly by income arising from " such a house.[21]

It seems to be immaterial that the charity has other sources of income—e.g., earnings of workers in the various homes and business establishments maintained by the society as part of its work.[22]

Donations, etc., to Mixed Charities

A " donation or bequest " here means a gift which is not " a voluntary subscription," i.e., is not a recurrent gift repeated annually or otherwise with more or less regularity.[23]

To be exempt the donation or bequest must be one of which no special application or appropriation is directed or declared by the donor or testator, and which may be legally applied by the governors, etc., of the charity as income in aid of voluntary subscriptions. " Special application or appropriation " appears not to mean a mere indication by the donor as to what he wants done with his money, but a definite declaration that neither it, nor the property from time to time representing it, is to be applied as income or for the ordinary current expenses of the charity.[24]

If the bequest is on trusts not within the exemption, but subject to a power of revocation an exercise of which might bring the bequest within the exemption, the bequest is not exempted so long as the power of revocation has not been so exercised.[25]

1. *There must be no special application or appropriation by the donor.*—Obviously there is no such application or appropriation in the case of a voluntary conveyance of land to an incorporated charity, without any trusts being declared.[26] There is, *prima facie*, no such special application or appropriation where a site is purchased and buildings erected out of :—

(1) Borrowed moneys, repaid by voluntary contributions.[27]

(2) Subscriptions to the charity which, though specially allocated by the subscribers for the purpose of the purchase or building, are, as a matter of fact, applicable to current expenses,[28] e.g., if it is intended that the property purchased or built can be sold and the proceeds applied as income.[24]

(3) Voluntary contributions, and the proceeds of bazaars organised for the purpose and sums left by the vendor on mortgage.[28]

(4) Moneys raised partly by voluntary subscriptions and donations and partly by borrowing.[29]

(5) Special subscriptions for that purpose and ordinary subscriptions applicable as income.[30]

(6) Funds in hand derived from annual subscriptions, donations and subscriptions free from special trusts.[31]

The views expressed by Stirling, J., in *Re St. John Street Wesleyan Methodist Chapel, Chester*,[32] seem to be inconsistent with the cases above quoted, and would not now be followed.

2. *The donation or bequest must be legally applicable as income.*—Section 62 exempts " from the jurisdiction every donation or bequest for the general purposes of the charity which is given on such terms that the capital may legally be applied for the maintenance of the charity, but to leave subject to the jurisdiction an endowment for general purposes the income only of which is applicable to maintenance."[33]

It is particularly to be noted that it is only on this point that the question, whether property is applicable as capital or income, is ever relevant under s. 62.

The property is *not* legally applicable as income where the trust is to allow the premises to be occupied and used for the purposes of the charity, the trustees having a power of sale, the proceeds of which have to be applied in the purchase of other hereditaments to be held on the same trusts ;[34] and, of course, an interim power of investment makes no difference.[35]

A legacy is *not* legally applicable as income where it is given " to the trustees of an endowment fund of " a hospital[36] or to a hospital " to found a bed there to be called *X* bed."[37]

The property *is* legally applicable as income where :—

(1) The property has been conveyed to an incorporated charity, which has a power of sale, without any trusts being declared."[38]

19 *Re Clergy Orphan Corporation* [1894] 3 Ch. 145, at p. 151, C.A. The view of Lindley, L.J., in the *Stockport* case [1898] 2 Ch. 687, at p. 697, that " endowment " does not include the investment of voluntary subscriptions, is inconsistent with his own decisions in the *Clergy Orphan* case.

N.B.—Neville, J., in *Re Society for Training Teachers of the Deaf and Whittle's Contract* [1907] 2 Ch. 486, especially at p. 495, quite misunderstood the decision in the *Clergy Orphan* case.

20 *A.-G.* v. *Mathieson* [1907] 2 Ch. 383, at pp. 393-4, *per* Cozens-Hardy, M.R.

21 *Re Stockport Ragged Industrial and Reformatory Schools* [1898] 2 Ch. 687, at p. 697, *per* Lindley, M.R. ; *A.-G.* v. *Mathieson*, *supra*, at pp. 394 and 395.

22 *Re Church Army* (1906), 94 L.T. 559, C.A. See the facts stated on p. 561.

23 *Re Charles Hardi and the Trustees of the Welsh Calvinistic Methodist Connexion* (1905), 92 L.T. 641, at p. 643, Buckley, J.

24 *Re Church Army* (1906), 94 L.T. 559, C.A.

25 *Re Sir Robert Peel's School at Tamworth* (1868), L.R. 3 Ch. 543.

26 *A.-G.* v. *Foundling Hospital* [1914] 2 Ch. 154, Joyce, J. ; as to the City property, see pp. 158 and 172.

27 *Re Charles Harding and the Trustees of the Welsh Calvinistic Methodist Connexion* (1905), 92 L.T. 641, Buckley, J.

28 *Re Society for Training Teachers of the Deaf and Whittle's Contract* [1907] 2 Ch. 486. A decision of Neville, J., on another point.

29 *Re Wesleyan Methodist Chapel in South Street, Wandsworth* [1909] 1 Ch. 454. See facts stated at bottom of p. 456. *Re Parry and Horton's Contract* (1905), 49 Sol. J. 500, Swinfen Eady, J.

30 *Re Orphan Working School and Alexandra Orphanage's Contract* [1912] 2 Ch. 167, at p. 179, Parker, J.

31 *A.-G.* v. *Foundling Hospital* [1914] 2 Ch. 154, Joyce, J. See the facts stated on p. 158.

32 [1893] 2 Ch. 618, at p. 636. The facts are stated on p. 621.

33 *Re Clergy Orphan Corporation* [1894] 3 Ch. 145, at p. 151, C.A.

34 *Re Stockport Ragged Industrial and Reformatory Schools* [1898] 2 Ch. 687, at p. 700, Chitty, L.J. ; *A.-G.* v. *Mathieson* [1907] 2 Ch. 383, C.A.

35 *A.-G.* v. *Mathieson*, *supra*.

36 *Re Corbett* [1903] 2 Ch. 326.

37 *A.-G.* v. *Belgrave Hospital* [1910] 1 Ch. 73.

38 *A.-G.* v. *Foundling Hospital* [1914] 2 Ch. 154, Joyce, J. ; and see *Re Corporation of the Sons of the Clergy and Skinner* [1893] 1 Ch. 178, at p. 186, North, J.

(2) The charity is a company, incorporated under the Companies Acts, with sufficiently wide powers under its memorandum of association.[39]

(3) The property is held in trust for the charity and to be conveyed and disposed of from time to time in such manner as may be ordered and directed for that purpose at any general court or meeting of the subscribers to the charity for the time being.[40]

(4) The property is held upon trust for use as a chapel as long as it is desirable so to use it, and upon trust to sell as the Connexion may direct, the proceeds of sale to be disposed of as the Connexion, in conformity with certain deeds, may direct, and such proceeds can be applied as income.[41]

(5) The trusts are those of the model deed for Wesleyan Methodist Chapels.[42]

Investment, etc., of Exempted Funds of Mixed Charities

Section 62 proceeds as follows :—

And no portion of any such donation or bequest as last aforesaid, *or of any voluntary subscription* which is now or shall or may from time to time be set apart or *appropriated and invested* by the governing or managing body of the charity, *for the purpose of being held and applied or expended for or to some defined and specific object or purpose connected with such charity*, in pursuance of any rule or resolution made or adopted by the governing body of such charity, *or of any donation or bequest in aid of any fund so set apart or appropriated* for any such object or purpose as aforesaid, *shall be subject to the jurisdiction* or control of the said board, or the powers or provisions of this Act.

" If the exempted donation or bequest or any subscriptions are in fact invested by the governors with the intention that they shall form a permanent fund or endowment, such investments and the income thereof are exempt from the jurisdiction, and such income is exempted from the ' income from endowment ' in the previous sentence[43] . . . The effect of it is that the governing body, by appropriating for some specific purpose and investing a donation or bequest, or any subscriptions, which would otherwise be exempt, do not bring such appropriated endowment or the income thereof within the jurisdiction.[44]

" I understand this clause to mean that no portion of the property lastly thereinbefore exempted from the jurisdiction is to be considered to be brought back into the jurisdiction by a specific appropriation such as is mentioned. I do not think the words are capable of any other meaning ; and, of course, if the investment or setting apart of a sum for a specific purpose does not take the property out of the exemption, it must follow, as I think is suggested by Lord Davey, that the appropriation and setting it apart by way of *investment* not for specific purpose, but *for the general purposes of the charity*, cannot in its turn take the property out of the exemption."[45]

Thus, if subscriptions, donations and bequests, which the governors of the charity might have legally applied as income are invested in consols, which are subsequently sold and the proceeds are invested in the purchase of land, the land is not subject to the jurisdiction.[46] This is so even if the charity is a corporation which has no express power to sell or let land.[47]

If the governing body declare trusts of the property, such trusts must be treated as valid until set aside, whether under the trusts the property or its proceeds of sale can[48] or cannot[49] be used as income. And it has been held[49] that if, under such trusts, it is no longer competent for the governing body to apply as income any real or personal property of the charity, such property is not exempt from the jurisdiction of the Charity Commissioners.

" In the fourth place, so long as property[50] which may be applied as income is invested, whether in real or personal property, so that it is still legally competent to the governing body to convert the investment into money and apply the money as income, such investment will in like manner be exempt from the Act. In the fifth place, if, by reason of some subsequent transaction, it is no longer competent to the governing body to apply the investment as income, there is nothing in *In re Clergy Orphan Corporation* which justifies the contention that the investment is exempt from the Act."[51]

Some support for this decision can be found in the decision of the Court of Appeal in *Re Clergy Orphan Corporation.*[52]

It is submitted that there is nothing in s. 62 which justifies the decision in *Attorney-General* v. *Mathieson*. That section exempts from the jurisdiction exempted funds of mixed charities which are " set apart or appropriated and invested . . . for the purpose of being held and applied or expended for or to *some defined and specific object or purpose* connected with such charity, in pursuance of any rule or resolution made or adopted by the governing or managing body of such charity." The Court of Appeal qualify this clear enactment by adding a proviso or qualification " under which object or purpose the investments can legally be converted into money and the proceeds applied as income."

It does not appear from the arguments of counsel or the judgments that the point now raised was raised or considered in *Attorney-General* v. *Mathieson*. If a similar case came before the Court of Appeal it may well be that the court, as in the *Child Villers* case, would refuse to treat the decision in *Attorney-General* v. *Mathieson* as of any authority on a point which is directly dealt with by the Act and was not considered in any of the judgments therein.

If the contentions of the writer are correct, then the logical result must be that once a donation to a mixed charity is exempt, then in spite of anything the governors of the charity may do or say, the donations and the property from time to time representing the same must for ever be exempt from the jurisdiction of the Charity Commissioners. The writer accepts this, and thinks that in all probability this is the

39 *Re Church Army* (1906), 94 L.T. 559, C.A. ; *Re Society for Training Teachers of the Deaf and Whittle's Contract* [1907] 2 Ch. 486, Neville, J.

40 *Re Orphan Working School and Alexandra Orphanage's Contract* [1912] 2 Ch. 167, at pp. 179–180, Parker, J.

41 *Re Charles Harding and the Trustees of the Welsh Calvinistic Methodist Connexion* (1905), 92 L.T. 641, Buckley, J. ; *Re Parry and Horton's Contract* (1905), 49 Sol. J. 500, Swinfen Eady, J.

42 *Re Wesleyan Methodist Chapel in South Street, Wandsworth* [1909] 1 Ch. 454, Joyce, J.

N.B.—This decision is not now any authority for the proposition that all land held on the trusts of the model deed are free from the jurisdiction. Since the *Child Villiers* case, each case has to be considered separately on the facts at the date of the gift of the land, or of the moneys invested in the purchase of the land.

43 It is not quite clear where " the previous sentence " is to be found. It seems to be that part of s. 62 which, in the cases of mixed charities, confines the jurisdiction of the Charity Commissioners to " the income from endowment only."

44 *Re Clergy Orphan Corporation* [1894] 3 Ch. 145, at pp. 151–2, C.A.

45 *Re Orphan Working School and Alexandra Orphanage's Contract* [1912] 2 Ch. 167, at pp. 178–9 ; and see *Royal Society of London and Thompson* (1881), 17 Ch. D. 407.

46 *Re Clergy Orphan Corporation* [1894] 3 Ch. 145, at p. 153 ; *A.-G.* v. *Foundling Hospital* [1914] 2 Ch. 154, at p. 170.

47 *Re Clergy Orphan Corporation, supra*, at p. 146.

48 *Re Orphan Working School and Alexandra Orphanage's Contract, supra*, at p. 180, Parker, J.

49 *A.-G.* v. *Mathieson* [1907] 2 Ch. 383.

50 Here " property " obviously refers to voluntary subscriptions and to donations (of which no special application, etc., is made by the donor, etc.), to a mixed charity.

51 *A.-G.* v. *Mathieson* [1907] 2 Ch. 383, at p. 393, Cozens-Hardy, M.R.

52 [1894] 3 Ch. 145, at pp. 153–4. The meaning of the passage is obscure. It suggests that the governors cannot declare trusts preventing capital being used as income.

correct view and one which may eventually prevail. The passages last above quoted from the decisions in the *Clergy Orphan* case and in *Re Orphan Working School and Alexandra Orphanage's Contract* support this view. But, of course, the decision in *Attorney-General* v. *Mathieson* stands, and, until it is overruled or explained away by the House of Lords or Court of Appeal, a purchaser from trustees in a similar case must insist on the trustees of the charity getting the consent of the Charity Commissioners.

There seems to be no reported case dealing with the exemption of a donation or bequest "in aid of any fund so set apart and appropriated for any such object or purpose as aforesaid."

IV.—Summary

The practical result of the cases appears to be as follows :—

A. *Foundation of charity.*—Property, whether real or personal, given to the charity by the deed *founding* the charity is subject to the jurisdiction of the Charity Commissioners,[53] and is not removed from the jurisdiction by the charity subsequently becoming a mixed charity.[54]

B. *Charity maintained wholly by voluntary contributions.*—If such a charity acquires—

(i) a freehold house which produces no income but is occupied by the charity—the charity ceases to be maintained wholly by voluntary contributions,[55] but probably is not a mixed charity.[56] Presumably the position is the same if the property is leasehold, unless possibly the rent is a full rack rent ;

(ii) property producing income—the charity becomes a mixed charity ;

(iii) land producing no income and not occupied by the charity—or leasehold held at a rack rent—possibly the charity does not cease to be maintained wholly by voluntary contributions.

When such a charity ceases to be so wholly maintained by voluntary contributions, it is submitted that all land, then owned by it or subsequently acquired by it before it becomes a mixed charity, becomes and remains for ever subject to the jurisdiction of the Charity Commissioners or Board of Education.

C. *Charities not maintained wholly by voluntary contributions nor partly by voluntary subscriptions*—e.g., a charity without any voluntary subscriptions at all. Land given to such a charity is subject to the jurisdiction of the Charity Commissioners, and this is so although the charity may subsequently become mixed[57] and although under the terms of the gift the property can be sold and the proceeds applied as income.[57]

D. *Mixed Charities.*—All the land of the charity is subject to the jurisdiction of the Charity Commissioners except—

(i) land which is or represents a donation or bequest made to the charity, *when* it is a mixed charity[57] "of which no special application or appropriation shall be directed or declared by the donor or testator, and which may legally be applied by the governing or managing body of such charity as income in aid of the voluntary subscriptions" ; and

(ii) land which represents voluntary subscriptions not invested in land before the charity became mixed. There is nothing in s. 62 to subject to the jurisdiction subscriptions received before the charity becomes mixed. But if the voluntary subscriptions are invested in the purchase of land before the charity becomes mixed, such land may not be exempt—the point has not been decided ; and

(iii) land which is or represents a donation or bequest to a mixed charity in aid of any fund set apart or appropriated and invested by the governing or managing body of the charity, out of exempted donations or bequests or voluntary subscriptions, for some defined and specific object or purpose connected with such charity.

If the decision in *Attorney-General* v. *Mathieson*[58] is correct the exemption ceases to apply to land, if the governors of the charity declare by deed that they hold the land upon trusts which do not enable them to sell the land and apply the proceeds as income.

E. *Charity which has been mixed, but has ceased to be mixed.*—There is nothing in s. 62 to suggest that exempted land under D comes under the jurisdiction as soon as the subscriptions cease, and there is some authority for saying that the exemption continues.[59] The same would seem to apply where the charity spends as income or loses all the capital producing the income by which the charity is partly maintained. With the exception of such exempted lands, the case is the same as B or C above.

The practical result of the cases, from a conveyancing point of view, is that the trustees of a charity should be required to get the consent of the Charity Commissioners (or the Board of Education) to the sale or mortgage, etc., unless they can show[60]—

(1) that the charity is a mixed charity ;

(2) that the land is or represents only property coming within one or both of the following categories, namely—

(*a*) donations or bequests, of the requisite character, made whilst the charity is mixed ;

(*b*) voluntary subscriptions received whilst the charity was mixed, or held by the charity in cash when it became mixed ; and

(3) that the governors of the charity have not subjected the land to a trust which prevents them applying the proceeds of sale as income.

There are, however, no decided cases showing that the consent is not required where—

(1) The charity owns land, which produces no income and is not occupied by the charity, or which is held on a lease at a rack rent, and but for such ownership the charity would be wholly maintained by voluntary contributions ; or

(2) The property represents voluntary subscriptions invested in land before the charity became mixed ; or

(3) The charity has ceased to be mixed, and the property was exempt whilst the charity was mixed.

Finally, it is unsafe for a purchaser to assume that Neville, J.'s decision in *Re Society for Training Teachers of the Deaf and Whittle's Contract* [1907] 2 Ch. 486—the case of a purchase by a charity wholly maintained by voluntary contributions—is good law. Nor is the decision of Joyce, J., in *Re Wesleyan Methodist Chapel, South Street, Wandsworth* [1909] 1 Ch. 454 an authority for the proposition that all property held on the trusts of the model deed for Wesleyan Methodist Chapels is free from the jurisdiction of the Charity Commissioners.

53 *Re Richard Murray Hospital* [1914] 2 Ch. 713, Joyce, J.

54 *Re Child Villiers' Application* [1922] 1 Ch. 394, C.A., as to the Leyton property. *Re Shakespeare Memorial Trust* [1923] 2 Ch. 398, P. O. Lawrence, J.

55 *A.-G.* v. *Mathieson* [1907] 2 Ch. 383, C.A.

56 *Re Stockport Ragged Industrial and Reformatory Schools* [1898] 2 Ch. 687, at p. 697, *per* Lindley, M.R.

57 *Re Child Villiers' Application* [1922] 1 Ch. 394, C.A., as to the land at Hoxton.

58 [1907] 2 Ch. 383, C.A.

59 See the observations of Romilly, M.R., in *Governors for Relief of Poor Widows, etc., of Clergymen* v. *Sutton* (1860), 27 Beav. 651, at p. 662, and the observations in *Re Child Villiers' Application* [1922] 1 Ch. 394, C.A., at pp. 407 and 412.

60 The burden of proof is on those who allege the exemption. See *Re Clergy Orphan Corporation* [1894] 3 Ch. 145, at p. 154 ; *A.-G.* v. *Mathieson* [1907] 2 Ch. 383, at p. 392.

V.—Supplementary

The publication of these articles elicited from Mr. T. Bourchier-Chilcott a letter which appeared in the SOLICITORS' JOURNAL.[61]

As requested, the writer below expands his views—with the same diffidence as in the case of the preceding articles.

1. The first question raised by the letter is as to the position of lands owned by a charity " wholly maintained by voluntary contributions " (hereinafter referred to as a " plain " charity) at the time of its ceasing to be so maintained. To the writer, the position seems to be as follows :—

All lands of every charity come under the jurisdiction of the Charity Commissioners, except in so far as they are specially exempted by the Acts. The only exemptions that need be here referred to are those applicable to a " mixed charity " and to a " plain charity." Exemptions on other grounds, e.g., user as a church, are hereinafter totally ignored.

The exemptions afforded by s. 62 to the two classes of charity are entirely different. Under s. 62 the Acts do not apply—

(*a*) to a " plain charity " at all. Here the exemption is to the charity, and not to its property, and exempts all property of every description from time to time owned by the charity ;

(*b*) to certain properties of a " mixed charity." Here the exemption is not to the charity, but to certain properties of the charity, e.g., lands acquired by a mixed charity merely by adverse possession would clearly not be exempt.

A plain charity ceases to be a plain charity if it acquires in any manner freehold land which produces income or is occupied by the charity.[62] The problem is whether the property owned by a plain charity, at the date when it ceases for any reason to be a plain charity, does or does not come under the jurisdiction of the Charity Commissioners. The solution depends on the construction of the provision of s. 62 that the Act " shall not extend or be applied " to a plain charity.

Obviously it is immaterial on this point whether the property is real or personal, movable or immovable, held on general or special trusts, or applicable as income or only as capital, or is or represents " voluntary subscriptions " or " voluntary contributions," or does or does not produce income.

There is no doubt that the provision means that the Act does not apply to the property of a charity whilst it is plain. But what happens to such property when the charity ceases to be plain ? The contention of the present writer is that the statutory provision in question means that the *exemption of a plain charity only applies to its property so long as the charity is plain.* Apparently the only other possible construction is that property of a plain charity is for ever exempt. The former construction seems to the writer to be correct.

If the property owned by a plain charity, at the time of its ceasing to be plain, is not exempt under the exemption of " plain charities," can it be exempt under any other provision of s. 62 ? The only provision possibly applicable is that applicable to mixed charities. If the plain charity becomes a mixed charity, the property to be exempt must come within the statutory exemptions of certain donations, bequests or voluntary subscriptions to a mixed charity.

Since the *Child Villiers* case it is impossible to argue that the property is a donation or bequest to a mixed charity. But the property may be cash, the result of voluntary subscriptions, or may be land purchased out of voluntary subscriptions. The provisions relative to mixed charities contain two references to " voluntary subscriptions " : it may well be that in these provisions " voluntary subscriptions " include cash received from voluntary subscriptions by the charity whilst plain and retained in cash till the charity became mixed, but it seems exceedingly doubtful whether " voluntary subscriptions " of a mixed charity include land purchased out of voluntary subscriptions by the charity whilst plain. Here " voluntary subscriptions " does not include special contributions or sums raised by a bazaar.

Accordingly, the view taken by the writer, *on the construction of the Act*, is that when a plain charity ceases to be plain, all property, of every description, owned by the plain charity at the time of its ceasing to be plain, comes and for ever remains under the jurisdiction of the Charity Commissioners—the sole possible exemption being voluntary subscriptions (not voluntary contributions) held in cash at the time of the plain charity becoming mixed.

The writer has in Section II (*ante*, p. 898), pointed out that there is a direct decision of Neville, J.,[63] to the contrary. That decision makes not the slightest impression on the writer, for, in the first place, the relevant provisions of the statute were not considered by the learned judge, and in the second place his judgment is based on an obvious misstatement of what was decided in the *Clergy Orphan* case.

2. It is over seventy years since s. 62 was enacted. So far as the writer is aware, no intelligible reason has ever been given for its provisions, and it is waste of time to search for one. It is sufficient for lawyers that the section has been enacted, and what it says is law—whether the lawyers like it or not. But the lawyers have ever tried to say that the section does not mean what it clearly says.

Section 62 in several places uses the word " endowment," which in s. 66 is defined in the wide terms already quoted in Section III. As so defined, " endowment " means " property," pure and simple.[64]

Before the *Clergy Orphan* case there was a series of decisions based on the fallacy that " endowment " means property, of which only the income is applicable for the general purposes of the charity, and that all property which is not " endowment " (as so defined) is exempt under s. 62.

The Court of Appeal in the *Clergy Orphan* case definitely decided that s. 66 meant what it said, and " that all property of every description belonging to or held in trust for a charity, and whether held upon trusts or conditions which render it lawful to apply the capital to the maintenance of the charity, or upon trusts which confine the charitable application to the income, is an endowment within the meaning of the Act."

One would have thought that this pronouncement would be final. But when one reads the subsequent cases, one sees counsel arguing and judges deciding on grounds absolutely untenable since the *Clergy Orphan* case.

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61 [*To the Editor of the Solicitors' Journal and Weekly Reporter.*]
Sir,—I have read with much interest the article in your last week's issue relating to charities.
There is one point to which I should like to draw attention. It is stated that " as soon as the lands are *purchased* the exemption enjoyed by a charity wholly maintained by voluntary contributions seems to go " and " if such a charity ceases to be wholly maintained by voluntary contributions," land acquired before such cessation—it is submitted as fairly clear that all such land comes within the jurisdiction of the Charity Commissioners. Is this so ? Is it not clear that a purchase of land by such a charity—the purchase money being derived from accumulations of surplus income—does not affect the status of the charity and the land so purchased is not subject to the jurisdiction of the Charity Commissioners ?
Might I draw the writer of the article's attention to the *Law Quarterly Review* of January last, in which will be found a paper on the subject of " Donation of land to charity." I should appreciate his observations thereon.
T. BOURCHIER-CHILCOTT.
4, Stone Buildings,
Lincoln's Inn, W.C.,
1st December, 1924.

62 *A.-G.* v. *Mathieson* [1907] 2 Ch. 383, C.A.

63 *Re Society for Training Teachers of the Deaf and Whittle's Contract* [1907] 2 Ch. 486.

64 *Re Orphan Working School and Alexandra Orphanage's Contract* [1912] 2 Ch. 167, at p. 176, Parker, J.

Perhaps the most striking example is Neville, J.'s judgment in *Re Society for Training Teachers of the Deaf and Whittle's Contract* [1907] 2 Ch. 486 which is full of gems such as—

> "I think that depends on whether the property was an endowment or whether it was property which the society was entitled to deal with as it pleased for its general purposes";

and—

> "In the *Clergy Orphan* case the Court of Appeal held that no property the capital of which is applicable at the discretion of the governors for general purposes is endowment at all."

The Act says that by "endowment" it means property of every description; the Court of Appeal in the *Clergy Orphan* case decided that the Act really meant what it said. That decision is obviously right and was restated with approval by Lord Parker.[65] Yet, the old fallacy is still believed in—no doubt with variations of different sorts.

A charity has "endowment" and so, presumably, is an "endowed charity" (an expression not found in s. 66), if it owns lands, or £1 at the bank (whether received as a voluntary subscription or a voluntary contribution or otherwise), a table or chair, or an empty ink bottle or a postage stamp. This is so, whether the property produces income or not, and whatever may be the source or trusts of the property.

It is most unfortunate that the expression "endowment" was ever used; if a colourless expression such as "property" or "assets" had been used instead of "endowment," we should have been spared most of the fallacious arguments and decisions decided on the material portions of s. 62.

It is curious to observe, on turning to s. 62, that really very little turns on the meaning of the word "endowment." It does not come into the provisions relative to a plain charity, and in the case of mixed charities is only material in ascertaining what is a mixed charity.

It is hardly possible to conceive a charity in existence having no endowment, e.g., not even a minute book of its proceedings. Money at the bank is certainly endowment. If the charity has money (e.g., sums being collected for a building fund) at the bank on a deposit account, the deposit interest seems to be "income arising from" endowment; whether the charity is being partly "maintained" by such income may depend on the circumstances, e.g., the charity would be a mixed charity if the income is used for maintenance, but possibly this would not be so if the interest is accumulated by way of accretion to the deposit.

3. So far as is material for the present purpose, Mr. Bourchier-Chilcott's contention in his article in the *Law Quarterly* of January, 1924, is that where a plain charity acquires (*a*) by gift simpliciter, or (*b*) by purchase out of voluntary subscriptions, land, whether producing income or not, the acquisition has no effect on the status of the charity. What he means by the "status" of the charity is not quite clear, but, apparently he means that the acquisition does not make the charity cease to be plain.

With all deference, it is submitted that Mr. Bourchier-Chilcott's contention cannot possibly be correct—at any rate, as to land producing income. His contention seems to be based on the exploded "endowment" fallacy, and on the cases decided before the *Clergy Orphan* case.

To the present writer it seems clear, beyond all reasonable argument, that if the land produces income, the plain charity ceases to be plain, and if the charity has any subscriptions it becomes a mixed charity, because the land is "endowment" and the charity becomes maintained partly by income from endowment.

If the land produces no income, but is used for the purposes of the charity—then, according to *Attorney-General* v. *Mathieson* [1907] 2 Ch. 383, the charity ceases to be a plain charity. The present writer remains to be convinced that *Attorney-General* v. *Mathieson* is correct on this point. But while the decision stands, it is a definite authority against Mr. Bourchier-Chilcott's views on this point.

4. The following passage, taken from Mr. Bourchier-Chilcott's article, is of interest:—

> "Hitherto, in settling requisitions on behalf of the purchaser of land from charity trustees, it has been thought unnecessary to require the consent of the Charity Commissioners (or Board of Education, as the case may have been) to a sale where the proceeds of sale could, by the trustees, be treated as 'income,' whether the charity was of a 'mixed' nature or supported wholly by voluntary contributions."

This was, indeed, a view fairly generally accepted, but the writer (though accepting it) could never understand on what this view was based; it was this failure to understand that caused him to investigate the matter as thoroughly as he is able, and on such investigation to come to the conclusion that the view above expressed is absolutely wrong and that for the past thirty years there has been no real excuse for holding such view.

65 *Re Orphan Working School and Alexandra Orphanage's Contract* [1912] 2 Ch. 167, at p. 176, Parker, J.

WITHERS' "MIXED CHARITIES"—A POSTSCRIPT

THE thirty-two years which have elapsed since the late Mr. Withers wrote in THE SOLICITORS' JOURNAL on mixed charities have seen no reported cases on this obscure subject: the courts have had no occasion to pronounce on the various aspects of the matter on which, as Mr. Withers pointed out, there was no judicial authority. There has been no opportunity for the House of Lords to overrule, or the Court of Appeal to explain away, *A.-G.* v. *Mathieson* [1907] 2 Ch. 383, on the correctness of which Mr. Withers, with great cogency, cast doubt in so far as it decided that where the governors of a charity declare trusts of donations, bequests or subscriptions exempt from the jurisdiction of the Charity Commissioners or the Minister of Education, and under those trusts it is no longer competent for the trustees to apply the trust property as income, that property is no longer exempt.

In 1945 Mr. Withers himself considered the subject further in an article entitled "Sales of Land of Mixed Charities" in the *Conveyancer* (vol. 10 (N.S.), p. 72). Broadly speaking, this is a restatement of the views which he had expressed in 1924, but by 1945 he had reached certain conclusions which are absent from his earlier treatise. Thus, in regard to s. 62 of the Charitable Trusts Act, 1853, he is prepared to accept that the words "the powers and provisions of the Act 'shall, with respect to such charity, extend and apply to the income from endowment only' do not exclude capital of property from the jurisdiction, and . . . in fact exclude nothing," and, indeed, he says that this has been assumed since 1893 (when *Re Corporation of the Sons of the Clergy and Skinner* [1893] 1 Ch. 178 was decided by North, J.).

So, again, he apparently accepts it as clear that the exemption of donations, bequests and subscriptions set apart or appropriated by the governing body of a charity for the purpose of being held or applied or expended for or to some defined and specific object or purpose connected with such

charity extends to a donation or bequest " in aid of any fund so set apart and appropriated for any such object or purpose as aforesaid," although there seems still to be no reported case dealing with such an exemption. On the other hand, he casts doubt on the proposition in *Re Church Army* (1906), 94 L.T. 559, that for there to be a "special application or appropriation," directed or declared by the donor or testator, there must be more than a mere indication by the donor as to what he wants done with his money, and in this connection he also doubts whether *Re Orphan Working School and Alexandra Orphanage's Contract* [1912] 2 Ch. 167 was correctly decided.

In his later treatise Mr. Withers points out that it is sometimes difficult to tell whether property is given for a then existing charity or to start a subsidiary charity. Whether or not the property is within the jurisdiction of the Commissioners or the Minister may depend upon the answer to this question: conversely, it may be possible, according to the manner chosen of making the gift, to put it within or keep it outside the jurisdiction. He emphasises that the land must be a gift to be exempt and, in suggesting that receipts from entertainments organised by a charity are not gifts and cannot claim exemption, apparently rejects once and for all the decision of Neville, J., to the contrary in *Re Society for Training Teachers of the Deaf and Whittle's Contract* [1907] 2 Ch. 486. He also refers to the problem which arises when land is bought out of a mixed fund—that is to say moneys partly within and partly outside the jurisdiction—and concludes that the land bought is probably within the jurisdiction. On the other hand, his view is that when land is bought by a charity and the vendor leaves on mortgage sums which are subsequently discharged out of moneys subject to the jurisdiction, the land, if not in the first place subject to the jurisdiction, is not thereby made subject thereto. A further point made by Mr. Withers is that voluntary subscriptions given for a special purpose and not returned to the donors on the failure of that purpose are not freed from the jurisdiction.

In his original treatise Mr. Withers said that, so far as he was aware, no intelligible reason had ever been given for the provisions of s. 62. Writing again in 1945 he goes further and says: " It is not creditable to English law that in the case of land, not registered under the Land Registration Act, 1925, persons dealing in charities have to go into [the matters with which he deals] or that, as between vendor and purchaser, the latter has to pay the cost of obtaining proof that the land is free from the jurisdiction." It is not surprising, therefore, to find the subject of mixed charities dealt with at some length in 1952 in the report of the committee on the Law and Practice Relating to Charitable Trusts (Cmd. 8710), and in 1955 the policy of the Government on this aspect (*inter alia*) of the law of charities was set out in a White Paper (Cmd. 9538).

How complex is the subject of mixed charities is well illustrated by the fact that it is by no means clear from the report that the committee, which refers to " endowed," " plain " and " mixed " trusts, entirely grasped the point which is so clearly brought out in *Re Clergy Orphan Corporation* [1894] 3 Ch. 145, 151, that the word " endowment " in the Charitable Trusts Act, 1853, is so defined in s. 66 as to include *all* the property of the charity—a point which Mr. Withers very much stressed: certainly it is, in the circumstances, to confuse the issue to talk of " endowed " charities as if a charity could have assets without being thereby endowed. Be that as it may, it was the view of the committee that mixed charities should be brought within the jurisdiction but should not be subject to the scheme-making powers of the Commissioners and the Minister in respect of those of their funds which might be spent: the committee sought to avoid a situation wherein a charity could move in or out of the jurisdiction. The Government, in their White Paper, take the view that it is impossible to simplify the law in that way, but that it is possible so to simplify it as to remove the difficulty which exists from the fact that donations and bequests applicable as income in aid of voluntary subscriptions are excepted from the jurisdiction if given to a mixed charity, but not if given to a plain charity. The Government proposal is quite simple: namely, that the law should be amended so that any property which a charity may possess for the time being on a trust which authorises the trustees of their own motion to resort to the capital and spend it as income should be excepted from the jurisdiction of the Commissioners and the Minister. Hence it would no longer be material to consider whether the charity was at the critical date—the date when the donation or bequest was made—plain or mixed, but only to look at the property in question and the trusts affecting it: the present law as to the division between plain and mixed charities would disappear. Perhaps it is not too much to hope that Parliamentary time may be found in the near future for the short amending Act which seems to be all that is required to give effect to so simple a solution to a problem which has proved to be of such vast complexity.

SPENCER G. MAURICE.

CHILDREN AS WITNESSES

WHEN the evidence of a person of tender years is relevant in civil or criminal proceedings, the question arises as to whether such a person should be allowed to give evidence at all, and if so, as to what form it should take and what weight it should carry. In other words, the court must decide if the child is a competent witness and, if it is held that he is, whether his evidence should be received on oath and whether it requires corroboration. The rules which govern the admission and cogency of the evidence of children vary according to the nature of the proceedings in which it is tendered, and those which apply in the civil courts will first be considered.

Capacity to understand nature of oath

It is, perhaps, paradoxical that the foundation of the modern law relating to the competence of children as witnesses in civil proceedings is to be found in a criminal case. In *R.* v. *Brasier* (1779), 1 Leach C.C. 199, a prosecution for assault, all the common law judges were asked to decide whether the evidence of a child under seven years of age was admissible and it was conceded that the child did not have a real understanding of the nature and meaning of an oath. Their lordships were of the unanimous opinion that no evidence whatsoever could be received unless the witness was on oath and that a child could only be sworn and therefore give evidence if he showed an adequate knowledge of the nature and importance of an oath. To ascertain whether a child possessed this understanding, the judges held that the court had power to question the child, particularly with relation to the " sense and reason " he entertained " of the danger and impiety of falsehood."

Similar considerations would seem to apply in cases in which it is sought to adduce evidence of what a person said shortly before his anticipated inevitable death. For many years it has been accepted that such evidence can only be admitted if the person who made the declaration would have been a competent witness if he had lived. In *R.* v. *Pike* (1829), 3 C. & P. 598, the prisoner was indicted for the murder of a child of four, and the prosecution desired to put in evidence what the child said shortly before her death. Her dying declaration was held to be inadmissible as her evidence would not have been received if she had lived as it was "quite impossible that she, however precocious her mind, could have had that idea of a future state which is necessary" for her to understand the nature and meaning of an oath which, in those days, needed to have been administered before her evidence could be received.

In another criminal case, *R.* v. *Williams* (1835), 7 C. & P. 320, it was held that before a child could be examined as a witness the judge should satisfy himself that the child feels the binding obligation of an oath from a general course of religious education, and that the effect of the oath on the conscience of the child arises from religious feelings of a permanent nature and not from instruction recently communicated for the purposes of the trial. This case, together with *R.* v. *Hall* (1849), 14 J.P. 25, apparently overrules the earlier decision in *R.* v. *White* (1786), 1 Leach 430, in which it was held that a person who had no notion of eternity or of a future state of reward and punishment could not be examined as a witness but that the trial could be postponed until the witness received enlightenment.

In *Williams'* case, the eight-year-old girl whose right to give evidence was in question had received religious instruction with a view to her being examined as to her understanding "of the danger and impiety of falsehood," but it was found that she had no real comprehension of religion or of a future state and therefore of the significance of an oath. For this reason the judge rejected her evidence.

These principles were recognised in *R.* v. *Nicholas* (1846), 2 C. & K. 246, where the court refused to postpone the trial of an indictment to enable a child of six, who was an important witness for the prosecution, to receive religious training in order to attain a sufficient knowledge of the nature and obligation of an oath. A different decision was arrived at in *R.* v. *Baylis* (1849), 13 L.T. (o.s.) 509, where Erle, J., made an order for a prisoner to be detained while a girl of ten, whom the prisoner was alleged to have raped, received religious instruction, and in *R.* v. *Cox* (1898), 62 J.P. 89, a case of gross indecency, the trial was broken off to allow a boy of eight years of age to be taught the meaning of an oath. It is probable that it is left to the judge to decide whether a child witness should be given the necessary religious instruction, but it is submitted that in a civil case it is unlikely that such an adjournment would be granted as the evidence of a very young child would rarely be of vital importance, while in criminal trials other considerations now apply which make the testimony of young children more readily admissible. It is suggested that these cases are now of academic, if not historic, importance, and it is interesting to note that the current edition of Halsbury's Laws of England states that the judge should ascertain whether the child possesses "sufficient intelligence to testify and properly to appreciate the distinction between good and evil and the duty of speaking the truth."

The examination of the child to ascertain his understanding as to the nature and meaning of an oath should be carried out in the presence of the prisoner and of the jury. In *R.* v. *Reynolds* [1950] 1 K.B. 606, the evidence of a school attendance officer bearing upon this question was received in the absence of the jury and, because of this, the conviction of the accused was quashed. The judge before whom it is sought to call the witness must himself assess the child's understanding of the oath and he should not accept the findings of the committing justices without questioning the child and forming his own opinion (*R.* v. *Surgenor* [1940] 2 All E.R. 249).

The Legislature has made important qualifications to these rules so far as they apply to criminal proceedings, but in civil cases it is submitted that the understanding of the nature and consequences of an oath, together with the ability to distinguish between good and evil (which surely requires religious knowledge) remain the key to the admission of the evidence of a person of tender years.

Criminal cases: statutory modifications

The provision which enables the unsworn evidence of children of tender years to be received by the courts in criminal cases is now to be found in s. 38 (1) of the Children and Young Persons Act, 1933. This section provides that "Where, in any proceedings against any person for any offence, any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth." Though not given on oath, evidence which is adduced under this section will be deemed to be a deposition if it is reduced into writing in all other respects in accordance with the provisions of s. 17 of the Indictable Offences Act, 1848 (now r. 5 of the Magistrates' Courts Rules, 1952), or of Pt. III of the Act of 1933.

In so far as it was applied to the unsworn evidence of young children, the earlier enactment provided that a statement made in court by a child who knew the facts and circumstances of the case should be put into writing, read over to and signed by the child and also by the justice or justices before whom it was made. This procedure has been substantially reproduced, if a little elaborated, in r. 5. Part III of the Children and Young Persons Act, 1933, modifies this by providing that in proceedings related to offences mentioned in Sched. I to the Act which are alleged to have been committed against a child or young person, the presence in court of that child or young person may be dispensed with if his presence is not essential to the just hearing of the case (s. 41), and that if a medical practitioner gives evidence that the attendance in court of a child or young person in respect of whom such an offence is alleged to have been committed would involve serious danger to the victim's life or health, a justice of the peace may take the evidence of the child or young person in writing out of court and this will nevertheless be regarded as a deposition (s. 42). Any deposition of a child or young person taken in these circumstances under the 1848 Act (now s. 41 of the Magistrates' Courts Act, 1952), or Pt. III of the 1933 Act is admissible in evidence without further proof, but not against the accused person unless it is shown that reasonable notice of the intention to take the deposition has been served upon him and that he or his legal representative has been given the opportunity of cross-examining the child or young person making the deposition (s. 43).

The important amendment to the general law of evidence so far as it relates to criminal courts which is confirmed by the Act of 1933 is that a person of tender years may now be a competent witness in "any proceedings against any person

for any offence" if that young person understands "the duty of speaking the truth." Presumably the intellectual resources required to understand this duty are more limited than those which are necessary to comprehend the impiety of falsehood, the reality of a future state or (at its simplest !) the distinction between good and evil. Indeed, one could go so far as to question how many adult witnesses have any true conception of these prerequisites to the administration of an oath, and for this reason it has been suggested that the oath is an anachronism and that any witness, if he feels under an obligation to tell the truth, should be allowed to give evidence unsworn, or at most on affirmation. It is submitted, however, that even in cases where there can be no possibility of a person having received adequate religious instruction to be able to understand the seriousness and consequence of taking the oath, many of such witnesses will have a notion, albeit very vague, that the moral offence of telling lies is increased because it is committed after that person has solemnly sworn to tell the truth. For this reason it would seem that the oath, whether it takes the form of swearing upon the New Testament in the case of a Christian witness, upon the Old Testament for a Jew, the Koran for the Mohammedan, the Vedas for the Hindu or the breaking of a saucer in the case of a Chinese witness who believes, or is said to believe, that if he does not tell the truth his "soul will be cracked like the saucer," has a vital and undiminished part to play in the administration of justice.

This submission, that evidence given on oath tends to be more reliable than that which is unsworn, would appear to be supported by Parliament in relation to the evidence of children. A proviso to s. 38 (1) of the 1933 Act says "that where evidence admitted by virtue of this section [that is, unsworn evidence] is given on behalf of the prosecution the accused shall not be liable to be convicted of the offence unless the evidence is corroborated by some other material evidence in support thereof implicating him." In the case of young children who give their testimony on oath, however, it is a rule of practice, and of practice alone, that the judge should warn the jury of the danger of acting upon the uncorroborated evidence of such a child.

Corroboration

Corroboration of the unsworn evidence of a child which is tendered to fulfil the obligation imposed by the proviso to s. 38 (1) must be such as will connect the accused with the crime with which he is charged and it must come from an independent source. In *R.* v. *Evans* (1924), 88 J.P. 196, the prisoner was convicted of having unlawful carnal knowledge of a girl whose age was eight and a half years, and the prosecutrix gave unsworn testimony implicating the accused. Corroboration of this evidence was given by an older girl who had been told of the offence by the younger girl shortly after it was alleged to have been committed. It was held that the evidence of the older girl was insufficient corroboration as it had not originated from an independent quarter but from the prosecutrix herself. It has been held in *R.* v. *Manser* (1934), 78 SOL. J. 769, that where the evidence of a child requires corroboration as a matter of law or practice, the unsworn testimony of another child of tender years will not be sufficient corroboration and in such a case the judge should direct the jury that the child's unsworn evidence must have received other corroboration and, unless it has, that they should attach no weight to it.

The law relating to the corroboration of the sworn evidence of young children has recently been reviewed by Lord Goddard in the Court of Criminal Appeal. In *R.* v. *Campbell* [1956] 3 W.L.R. 219; *ante*, p. 454, a schoolteacher was charged with the indecent assault of seven different boy pupils. The indictment contained seven counts and on some of them evidence was given by a boy referred to in another count, while on the remainder corroborative evidence was tendered by children who were not directly concerned in any of the charges. It was held that the sworn evidence of a young person could be corroborated by the evidence of another child, whether such confirming evidence was given on oath or not, and in this particular case the fact that the child who gave the corroborative evidence was himself a victim of a similar assault did nothing to derogate from the value of his corroborative evidence. Lord Goddard summed up the law as to the corroboration of children's evidence in these words: "the unsworn evidence of a child must be corroborated by sworn evidence; if . . . the only evidence implicating the accused is that of unsworn children the judge must stop the case . . . The sworn evidence of a child need not as a matter of law be corroborated, but a jury should be warned, not that they must find corroboration, but that there is a risk in acting on the uncorroborated evidence of young boys and girls, though they may do so if they are convinced that the witness is telling the truth . . . The evidence of an unsworn child can amount to corroboration of sworn evidence though a particularly careful warning should in that case be given."

Power to clear court

Once it has been decided that the evidence of a child is admissible, the Act of 1933 seeks to assist a child to give accurate evidence and to save him from unnecessary embarrassment by providing in s. 37 that where, in any proceedings relating to alleged conduct which is contrary to decency and morality a child is called as a witness, the judge may direct that the court should be cleared of all persons who are not directly concerned with the case. These powers are given in addition to those which enable the courts to hear proceedings *in camera* but they do not operate to authorise the exclusion of *bona fide* representatives of a newspaper or news agency.

Child's liability for false evidence

Both the courts and the Legislature have attempted to ensure that the evidence of children of tender age should not be excluded if there is every reason to believe that it is reliable. This privilege which is sometimes accorded to them does not escape, however, the inevitable correlative of duty, the duty to tell the truth. If a child's evidence is admitted on oath because he has been able to pass the examination set for him by the judge, he will be guilty of perjury if the evidence which he gives which is material to the proceedings is false or is not believed by him to be true and is proved to be false. A child who has not been sworn must also take care that he does not "wilfully give false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury," as s. 38 (2) of the Children and Young Persons Act, 1933, directs that "he shall be liable on summary conviction to be dealt with as if he had been summarily convicted of an indictable offence punishable in the case of an adult with imprisonment." It is true, of course, that the Act of 1933 also provides that a child under the age of eight years shall be conclusively presumed not to be guilty of any offence and that the Criminal Justice Act, 1948, ensures that very young children should not be sent to prison; but that is another matter.

D. G. C.

THE CHARITIES' WHO'S WHO

THERE is an inexhaustible fascination in reading the Elizabethan Statute of Charities, which one might describe as the marshland from which the meandering river of the English law of charities takes its rise. The clear spring from which the mediæval conception of charity flowed had been blocked up and trampled into mud in the religious contentions of the sixteenth century. After that it was necessary for the politicians and lawyers to put their heads together and devise a way of irrigating the thirsty soil of the social scene by some means akin to the charity which had formerly vivified it. When lawyers and politicians put their heads together to frame legislation the result is never as lucid as they imagine it will be. The Factory Acts, the Workmen's Compensation Acts and the Rent Restriction Acts are all monuments to the vanity of legislative wishes.

The Statute of Charities, having been in operation far longer than any of them, has had far greater scope to produce doubts and anomalies. Reading it dispassionately, it is hard to see how it could have avoided doing so. Here is its enumeration of charitable uses: ". . . some for reliefe of aged impotent and poore people, some for maintenance of sicke and maymed souldiers and marriners, schooles of learninge, free schooles and schooles in universities, some for repair of bridges, portes, havens, causwaies, churches, seabankes, and highwaies, some for education and preferment of orphans, some for or towards reliefe, stocke or maintenance for houses of correction, some for mariages of poore maides, some for supportation, ayde and helpe of younge tradesmen, handiecraftsmen and persons decayed, and others for reliefe or redemption of prisoners or captives and for aide or ease of any poor inhabitant concerninge fifteenes, setting out of souldiers and other taxes." Such was the bundle of bones of contention flung by Parliament into the High Court of Chancery to be sorted out, articulated and rationalised as best the judicial mind could manage. The labyrinthine results are enshrined in the works of Tudor and Tyssen.

Nevertheless, an inquiring foreigner, seeking to inform himself on the English law of charities and proceeding by way of the reference library instead of the law library, might easily gather the totally fallacious impression that on this point at least the English were orderly, logical, concise and comprehensible. The valuable work which would suggest this to him is the *Annual Charities Register and Digest*. There in 373 pages and 35 sections he would find all the established charities neatly classified and tabulated in double columns just like *Who's Who*. It is a miracle of co-ordination. But beneath the surface of the order so produced one can sense the rich and varied chaos of casuistry and case law. Just so in *Who's Who*, beneath the orderly surface of distinction and respectability, there lurks, after all, a whole hidden history of adventure, risk, hair-breadth escapes, gambles that came off but might very easily not have come off, rivalries and contentions which might have had an ending far less satisfactory than this quasi-apotheosis. Similarly, reading Burke with a knowledgeable eye, one can gather from its ceremoniously presented pages hints, and sometimes more than hints, of lurid corners in the history of the peerage.

But what someone with a taste and a talent for social history might do with the *Annual Charities Register* would be to analyse it in the light of social change and social consciousness. Open the pages at random. Here we are in the middle of the section devoted to "Relief Agencies—General and Special." What is this? The Irish Distressed Ladies Fund founded in 1888 and operating from an address in Kent exists for "relief of ladies suffering through land depression throughout Ireland." That carries the mind back to a whole turbulent chapter of British political history, the defeat of Gladstone's first Home Rule Bill in 1886, the revolt of the Irish tenantry, the Coercion Acts, the Land Acts, the Irish Parliamentary Party led by Parnell obstructing the whole machinery of legislation, the Phœnix Park murders, and in 1888 the commission of three judges sitting to investigate the charges levelled by *The Times* against the Irish leaders under the heading "Parnellism and Crime." On what a high tide of emotion must that fund have been launched! Now after so much water, so often bloodstained, has run under the bridges of the Liffey, it quietly administers another fund to give "pensions of not less than £25 p.a. to poor Protestant Irish ladies." But what echoes the sixteen lines of its entry in the Register awaken!

Or on the next page look at Lady Hewley's Trust founded in 1704 "to assist ministers disabled by age or infirmity; widows and daughters of deceased ministers; students for the ministry; and poor places (i.e., places of worship having no settled minister in charge). Applicants must belong to the Independent, Presbyterian or Baptist denominations in Cumberland, Durham, Lancashire, Northumberland, Westmorland and Yorkshire." There is a turning of another page of social history. Nonconformity has emerged from the persecutions of the Tudors, from the internecine rivalries between its sects which split the Parliamentary cause from top to bottom in the time of the Commonwealth, ranging the Independents and the Presbyterians in hostile camps and armed conflict. Now in the time of Queen Anne Nonconformity has closed its ranks and settled into an accepted situation as a potent factor in the life of the nation. To-day the trust administers an annual income of £10,000.

On the same page one's eye is caught by one of those small charming charities which, personal and simple, belong essentially to a far less complex age than ours—Elizabeth Knight's charity at Rochester simply towards the maintenance of widows called "Mrs. Knight's Poor Sisters." It was founded in 1709 and its annual income is £45. By contrast, look at the Lockington and Marshe charities whose annual income of £490 administered from Lincoln's Inn mirrors the mind of a benefactor fussily precise in his benefactions: £20 to each of the incumbents of Dunstable and Leighton Buzzard, £10 to the incumbent of Hockliffe, £10 each to the poor of Dunstable and Leighton Buzzard, £25 to each of six maiden ladies at the Ladies' Lodge, Dunstable; the residue in sums of £5 each to ten clergymen and ten widows of clergymen of the Church of England and £2 each to twenty maids or widows.

Very different from that meticulous precision is that intriguing trust founded in 1851 and now having about £155 annually at its disposal in St. Albans "for maintenance, education and binding out apprentices of boys whose names are Kentish."

Local patriotism is exemplified in many forms. There is the London Lincolnshire Society's Benevolent Fund providing annuities for natives of Lincolnshire resident within 20 miles of the Bank of England for three consecutive years. Male applicants must be sixty years old, female fifty. The fund, founded in 1885, has an income of £65.

Once again a contrast, the Maes-yn-haf Settlement founded in the Rhondda in 1927. You remember the bitter depression

in the Welsh coalfields between the wars. Well, look at this for courage and hopefulness, the programme of lectures, university extension classes, L.E.A. classes, music, drama, handicraft, photography, dancing, current affairs, young people's club, pottery, holiday camps. Then there is the sheltered industry to give training and employment to twenty-five disabled men, chiefly miners suffering from pneumoconiosis, in rug-weaving and woodwork. The settlement's income is £4,468.

A whole cross-section of foreign history and our relations with foreign countries might be deduced from the section dealing with charities for refugees and aliens. There is the Society of Friends of Foreigners in Distress dating from 1806, the German Society of Benevolence dated from 1817, the Ibero-American Benevolent Society dating from 1861 and societies directed to the assistance of Frenchmen, Belgians, Dutchmen, Italians, Hungarians, Czechs, Poles, Russians, Byelorussians, Ukrainians, Latvians, Lithuanians, Greeks, all reflecting the shifting tides in the affairs of men.

This interweaving of charity with social history is a most extraordinary and touching thing. In daily life one is unconscious of it as one is of the air one breathes, and yet without that charity, fed by numberless kindly impulses, society, as we know it, would disintegrate.

RICHARD ROE.

FLOTSAM AND JETSAM

A PLEA FOR THE POOR BOX

IT has been well said that magistrates' courts to-day are social casualty clearing stations. Into them are brought those who have really touched bottom in the social strata—vagrants, prostitutes, beggars, loiterers, petty thieves and the like—many of whom have given up the struggle to rehabilitate themselves and feel that nothing is left but to spend the rest of their days practising the unlawful arts to which they have fallen and upon which, interspersed with varying terms of imprisonment, they become more and more dependent for their livelihood.

It is true of course that the social legislation of recent years has greatly reduced the numbers of these wrecked lives. The criminal statistics on this point are, indeed, startling. Beggars, who averaged 25,000 convictions yearly up to 1914, are now down to 600 in 1955. Convictions for wandering—the now almost extinct tramp—which averaged sometimes 12,000 a year, are now just over 500. To put it no higher, here are valuable economies in a market crying out for more and more hands. But in spite of this, the magistrates' courts in the big industrial centres are still confronted with problem cases from this part of their work: and there is often an urgent need for help which is equally often repaid by the reclamation of an individual who promised to become nothing but a drain upon his fellow citizens.

What can be done in this way is best shown by an example taken at random from the lists of a busy court. A young woman was charged one morning with "using insulting behaviour whereby a breach of the peace might be occasioned." "Insulting behaviour" is, of course, a term of art which often means no more than refusing to go away when asked to do so by a police constable. This is exactly what the young woman had done, but the story behind her refusal revealed something much more serious.

She had left her native village to come to London and had been enticed into a circle of undesirables who had launched her upon a life of prostitution. From this she had become a drug addict to such an extent that she was registered with a hospital where she attended at intervals to be given an injection of the drug because now she could not exist without it. On the evening of her arrest, she had gone back to the hospital earlier than she should for another injection. When it was refused she caused an uproar in the waiting room. A constable had to be called to eject her. Outside, she continued her clamour and, refusing to go away, she was arrested.

The magistrate decided to remand the girl for a medical report. The realisation that she would be kept in custody for a week without having any recourse to the drug filled the wretched girl with despair, and she promptly went into hysterics and filled the court with her cries until mercifully a police car took her out of earshot to the remand prison.

What could be done for her? In such cases, all courts have at their disposal a staff of devoted probation officers and some—the luckier ones—a fund generally alluded to as "the Poor Box" with which these exceptional cases can be helped.

The probation officer saw the girl in her prison cell and persuaded her to agree to spend a few months at a convent which specialised in dealing with those who wished to rid themselves of their craving for drink or drugs. The next step was more difficult. The probation officer had to persuade the Mother Superior of the convent that this young girl, coming from the environment in which she had been living, would not demoralise or outrage the susceptibilities of her other patients. This at length achieved, the last question was who would pay the very modest fees for the girl's bed and board during the next few months. Fortunately, at this particular court Poor Box funds were available, and so by the time the girl appeared again on remand everything had been arranged.

Her appearance then was very different from the half demented creature she had looked a week before when the thought of seven days without an injection had filled her with such anguished dismay. So far she is co-operating well at the convent and seems resolved to throw off the yoke of the deadly habit that was destroying her. A few weeks ago she wrote to the probation officer, thanks to whose mild but insistent appeals she had been admitted to the convent—"No other court has given me a chance like yours. Thank you very much for being so kind to me. As you mentioned to me, I'm on the rocks now and its up to me to stay on the rocks. S—— is a lovely place. Thank you once again."

It is possible of course that when this girl returns to London she will fall back into her old ways. But it is equally possible that the remembrance of the sway in which the drug habit had held her may determine her never to touch a drug again. If so the few pounds spent in keeping her at the convent will be repaid over and over again; and but for the existence of a handy fund at the disposal of the magistrates the girl could not have been given the chance she has had.

Until the introduction of free legal aid, a good deal of Poor Box money was spent in instructing advocates to act for impecunious litigants, both prosecutors and defendants,

appearing in person. To-day legal aid can be granted in all criminal prosecutions but not in matrimonial or affiliation proceedings. In many of these the technicalities of the law are so intricate that some legal aid is imperative if the parties are to put their cases properly. Until this hiatus in our system of legal aid is filled, the court Poor Boxes still form a valuable stop gap. However helpful magistrates and their clerks try to be to an unrepresented litigant, there are limits to what they can do. They cannot for example sift the evidence in advance or decide what witnesses should be called or arrange for their attendance. Indeed it would be quite improper for them to do so because they would lay themselves open to the charge of taking sides where they should be impartial judges.

Those who think that Poor Boxes are now as out of date as boot tickets, bread coupons and the exiguous soup of the great lady from the big house should spend an hour with the probation officer of a busy court. They will be surprised to find how many of those whose folly has brought them into collision with the law can be set back upon the straight and narrow path given a little tolerance, a little humour and sometimes a little money. Here for example is a man who has pawned his tools to obtain money for drink. He has been fined for drunkenness but at the moment has the money neither to pay his fine nor to redeem his tools and so start work again. A few pounds from the Poor Box helps to prime the pump and set him back on his feet. Here is a young girl who has quarrelled with her relatives and left home for the town, has fallen into debt and has just stepped down from the dock convicted of embezzlement from her shopkeeper employer. Contrite and humble, she wants to go back to her home. Her parents want her back too, but there is the little question of the fare. The Poor Box pays it and back home she goes. Instances like these are a daily occurrence and in a surprisingly large number the money advanced is gratefully repaid.

The probation officers work in close alliance with those charitable institutions founded for the help of the needy and the outcast. They have a specialist's knowledge of these institutions and sense at once which is likely to be able to help a particular case. The convent to which the drug addict alluded to earlier in this article was sent is a good instance of this close and valuable liaison. The number and variety of these institutions are such that there is some refuge for everyone no matter how low he may have fallen. It is only when the individual himself will not help in his own rehabilitation that there is nowhere to which he can be sent except to prison or Borstal.

In return for taking cases from the courts, the magistrates reimburse these institutions either by an annual payment from the Poor Box, usually at Christmas, or an agreed fee for each person assisted. These payments from the Poor Box may amount annually to some two or three hundred pounds.

The Poor Boxes at some courts may have ample funds. At others they are very low. At many there are none. Should anyone think of entrusting money with his local bench for the relief of cases such as have been described here, his best plan would be to find out from the magistrates themselves or their clerk or the probation officers whether such a fund exists. At those courts where there is little or no money available, it is hoped that this short article has shown that a bequest for such purposes is likely to be put to good use.

F. T. G.

BREACH OF STATUTORY DUTY

THE common-law duty to provide a safe system of work which the law imposes on a master is often overshadowed by statutory provisions or regulations in relation to safety, health or welfare. In such a case it must always be borne in mind that the statutory duty is primarily penal on the master and that it is a separate question whether there is a civil right to damages created by the regulations in favour of the servant (*Groves* v. *Wimborne* (*Lord*) [1898] 2 Q.B. 402).

Construction of regulations

Even in the best regulated regulation-drafting circles, omissions and even confusions may be found in the final product. Something of this sort seems to have occurred in the Shipbuilding Regulations of 1931, and although they have been previously criticised (by Devlin, J.) and a recommendation for re-drafting made, nothing has been done. The result of that, as Diplock, J., said in a recent decision, is that " any matter which depends on the construction of the Shipbuilding Regulations, 1931, is one on which more than one view may well be held."

Nevertheless, there are certain well-accepted steps by which one approaches the solution to the problem of construction. First, there is the question whether the regulations apply, e.g., was the place where the plaintiff suffered the accident a " public dry dock " or a " factory " ? Secondly, do the regulations impose a duty on the defendant ? To take the case of shipbuilding, it often happens that there are several contractors, each with his own employees, working at the site, and the question arises whether the duty is imposed on each employer, or on the owner of the ship, or otherwise. This is discussed below. Thirdly, there is the question whether there has been a breach of the regulation, which is, of course, a question of fact.

Steps four, five and six concern the plaintiff. The fourth question is whether a civil remedy is created in favour of the plaintiff, as mentioned above, and this is largely a question whether the regulation was aimed at his protection. The fifth and sixth questions do not concern construction of the regulation, but, in an action, are basic matters, namely, whether the plaintiff's injuries were caused by the breach (a matter largely of medical evidence) and, finally, whether there was contributory negligence on the part of the plaintiff, which can, of course, be pleaded even in the case of statutory duty.

A recent decision

Most of these problems had to be faced in the recent decision, *Bryers* v. *Canadian Pacific Steamships, Ltd.* [1956] 1 W.L.R. 1181 ; *ante*, p. 635. The plaintiff was required to work on one of the lower decks, known as " F deck." This deck was simply the flat steel covers to the tunnels containing the twin propeller shafts. In between these tunnels was an unprotected well, about 12 feet deep, which formed No. 5 lower hold. The edge of the top of the tunnels where they flanked the well was rounded in an arc of 3-inch radius. In order to do the work ordered the plaintiff needed a light-cluster and, as he thought he would find one somewhere on

F deck, he borrowed a torch, descended to F deck and proceeded to look for the light-cluster. The torch was adequate, but nevertheless the plaintiff slipped on the edge of the well and fell into No. 5 lower hold and was injured.

The statutory duty, of which a breach was alleged, concerned reg. 10, which deals with the protection of openings in decks and tank tops; the duty is *prima facie* imposed on the occupier of the shipbuilding yard, but there is a proviso to that where the ship is being repaired in a public dry dock and where the repairs are being done by a person who has contracted with the shipowner to do the repairs. The proviso is that the repairer shall be deemed to be the occupier. It is here that the defective draftsmanship shows itself, because it appears that the draftsman assumed that there would be only one repairer who would contract with the shipowner. In fact, in *Bryers'* case, there were many repairers each of whom had a contract direct with the shipowner and the question arose whether any, and if so which, of the repairers was to be deemed occupier; or whether they were to be jointly occupiers; or, finally, whether one could take the view that there was no notional occupier, in which case there was then the question whether the liability for observance of the regulation was on the shipowner.

Diplock, J., came to the conclusion that the use of the singular form in the regulation, where it deals with the person contracting to repair, excluded the plural in all the circumstances. And his lordship did not consider that the regulation could have intended to impose a joint liability on the many repairers, since it would be odd if a repairer who had no access to that part of the ship where another repairer was working should be liable for the safety of, say, ladders used by the other repairer. The result was that there was no notional occupier in such a case.

This view was upheld in the Court of Appeal ([1956] 3 W.L.R. 776; *ante*, p. 816), but it is now learned that leave to appeal to the House of Lords has been granted. These appeals are directed particularly to the construction of this particular regulation rather than to the general principles here discussed.

However, there remained the question whether, where there was no notional occupier, in cases where repairs were being done under contract with the shipowner, there was no liability on the shipowner under the proviso to the regulation. Since the regulation applied where two conditions were satisfied, viz., that the ship was being repaired in a public dry dock, and the control of the ship, *apart from the work of repair*, remained with the shipowner; and since there were exceptions to the proviso relating to repairs, of which exception (*b*) read: "where control of the ship apart from the work of repair remains with the shipowner, it shall be the duty of the shipowner . . . to provide the protection specified in regulation 10 . . . ", his lordship considered that it was a proper construction to hold that the shipowner remained liable in this case where the repairs were by numerous people so that there was no other notional occupier on whom to put the duty than the shipowner.

In dealing with the question whether there is a breach of statutory duty one is faced with the problem whether the duty is "absolute" (in the sense that a certain result must be produced) or merely that the employer must take "all practicable steps" or other modified duty. Where the duty is absolute the question of negligence or practicability is irrelevant (*John Summers & Sons, Ltd.* v. *Frost* [1955] 2 W.L.R. 825 (H.L.); 99 SOL. J. 257).

Persons to whom duty owed

Problem number four, viz., whether the duty was owed to any persons employed in the ship or only to those employed in connection with the work in respect of which the regulation sought to give protection, has been dealt with in these columns in conjunction with several other cases (see "Persons Employed," *ante*, p. 737). This case shows once again how tortuous is the path which a plaintiff and his advisers have to tread if they are to succeed in winning an action for the breach of a regulation.

L. W. M.

Landlord and Tenant Notebook

TRUSTS OF LEASEHOLDS AND REVERSIONS

SECURITY is a *desideratum* of any trust property, whether the trust be a charitable one or not; and I propose to recall in this article that it was the same year, the year 1864, which produced decisions showing that (i) equity's attitude towards the settlement of a reversion by an expectant heir, for the benefit of his wife and children, was not determined by the same principles as those affecting mortgages, etc.—namely, an attitude of discouragement—and (ii) the benefit of a mere agreement for a lease could be placed and held in trust.

The events which occasioned the dispute in *Shafto* v. *Adams* (1864), 4 Giff. 492, would, nowadays, be more likely to lead to a petition to the Probate, Divorce and Admiralty Division of the High Court than to proceedings in Chancery. Unhappy differences had arisen between the plaintiff on the one hand and his wife and her mother on the other hand; he had left the matrimonial home and moved into a hotel, where emissaries from the wife and mother-in-law, including a solicitor, called upon him and laid down conditions for a reconciliation. These were substantially financial conditions, but, the plaintiff being badly off at the time, it was necessary to look to the future. According to the plaintiff, the solicitor told him his reversionary estate was worth £100 or £200; but the future was in fact far brighter. The estate: an uncle held a fee-simple estate for life, remainder to his brother the plaintiff's father, remainder to the plaintiff's first and second sons and their respective issue. And on 27th July, 1858, the plaintiff went, by invitation, to the private residence of the solicitor, who produced an indenture complete but for signature, and read it without comment; which indenture the plaintiff meekly signed. This deed, in fact, made between the plaintiff, his mother-in-law, and two trustees, after reciting the interests of the plaintiff's father, uncle and sons, and the fact that the mother-in-law had made many payments for his benefit, granted all the plaintiff's interest in the property "expectant upon the determination of the several deceases or other determination of" the uncle and father to the trustees, as soon as he became entitled to the receipt thereof, to hold for ninety-nine years if the plaintiff should so long live, upon trust to stand possessed of the rents and annual profits and pay them to his wife for her separate

use, and after her death to pay £500 a year for the maintenance of the children, etc. The mother-in-law covenanted to contribute £1,000 forthwith.

The deed creating this trust was made in 1858. It was some years after that the plaintiff found that the property had a magnificent rent roll, and that he had signed away some £16,000. He filed a bill in equity asking that the settlement be set aside; the defendant being the surviving trustee. I may mention that, possibly because he who comes to equity must do equity, the bill contained an offer to repay whatever sums the mother-in-law had disbursed for the plaintiff's benefit.

Sir John Stuart, V.-C., rejected the bill in a few well-chosen words. "There is no authority or intelligible principle upon which the court will interfere at the instance of a husband to set aside a settlement made by himself in favour of his wife and children . . . His being an expectant heir is no reason why he should not make such a settlement as this. The principle upon which the court acts in discouraging mortgages, sales and dealings by expectant heirs of their reversionary interests has no application to the case of an expectant heir who has made a settlement upon his wife and children."

It was unhappy differences between husband and wife coupled with an unhappy difference between income and expenditure that led to the proceedings in *Shafto* v. *Adams* and the demonstration that a reversionary interest, even an expectant one, can be held in trust; it was the latter type of difference alone which occasioned the decision in *Gilbert* v. *Overton* (1864), 2 H. & M. 110, and showed that even an agreement for a term could—and this before the fusion of law and equity—be the subject-matter of a trust. The story began with a building agreement between *B* (owner) and *W G* (builder), made in 1788, *B* agreeing to grant on certain conditions a plot of ground, and the term promised being ninety-nine years. The following year *W.G* assigned to trustees, in consideration of natural love and affection, etc., "all his estate, right, title, interest, term or terms of years then to come, and unexpired benefit, property, profit, claim, demand whatsoever both at law and in equity, or otherwise howsoever, of, in, and to the said premises" to hold as trustees. The said premises were now the plot of land and the buildings created thereon. The trustees were to receive the rents and out of them to pay the rent and perform the covenants in the building agreement and then on trust for *W G's* life and after his death to such of his children as he should appoint, and, in default, then to his son, *H G*, for life, remainder to *H G's* children.

Less than a month later, a ninety-nine-year lease was granted to *W G* at the rent mentioned in, but without reference to the terms of, the building agreement. But *W G* never assigned the term to the trustees of the settlement.

He died in 1805, purporting to leave five houses built on the land to his son, *H G*. The appointment was found to be bad, but as a result of election by other children it was declared that *H G* was entitled to possession of those five houses. He enjoyed such possession until 1829, when he was adjudicated bankrupt.

His assignees in bankruptcy then put the five houses up for sale by auction, describing the subject-matter as a "life interest" but cautiously adding "the vendors to convey the life or such estate or interest of the bankrupt as the assignees then had." One *J* bought four and signed a memorandum recognising that he had purchased the life interest described in the particulars and he agreed to the conditions of the sale; and the contract was completed accordingly. In 1836 *J* assigned his interest to the defendant in the case.

After that nothing happened till *H G* died in 1863—when the plaintiffs, children of his, brought proceedings in which they asked for execution of the trusts of the 1789 settlement, for an account to be taken, and for the four houses to be vested in themselves. For they had not been made a party to the proceedings in which the appointment made by his grandfather was impugned.

The arguments advanced by the defence were that the trustees had never had more than an equitable interest; also, the actual trust deed having been lost, and being evidenced only by recitals in the lease to *W G*, there was nothing to show that *W G* had been entitled to that lease under the building agreement.

But Page-Wood, V.-C., was quite satisfied that there was nothing to prevent an equitable interest in property from being held in trust; and, as regards the second point, held that he was entitled to take judicial notice of the fact that leases granted under building agreements are not granted immediately, but on fulfilment of conditions. It followed that the trustees could have obtained a decree of specific performance (no mention seems to have been made of delay as a bar to that remedy); and the subsequent getting in of the legal estate by the settlor did not displace the trust once effectively created. And judgment was given declaring that the plaintiffs had been entitled to one-fifth of the estate since the death of their father, ordering an account to be taken of rents since that date—and granting them a vesting order. The defendant may well have felt disappointed at the operation of equity.

R. B.

At the annual dinner of the INCORPORATED LAW SOCIETY OF PLYMOUTH, held on 3rd November, Mr. G. R. King Anningson, as the guest of honour, replied to the toast "Bench and Bar" which was proposed by Mr. K. C. Brian, president of the Society. Also present were Sir Edwin Herbert, President of The Law Society; His Honour Judge M. R. B. Shepherd and the Lord Mayor of Plymouth.

The UNION SOCIETY OF LONDON announces a joint debate with the OXFORD UNION entitled "That the U.S.A. gives greater promises of producing an effective multiracial society than does the British Commonwealth," to be held in the Common Room, Gray's Inn, on 12th December, at 8 p.m.

Sir Edwin S. Herbert, President of The Law Society, will be one of the guest speakers at the annual dinner of the CHARTERED ACCOUNTANT STUDENTS' SOCIETY OF LONDON, to be held at Grosvenor House, Park Lane, on Monday, 10th December.

At the annual general meeting of the BROMLEY AND DISTRICT LAW SOCIETY on 31st October, the following officers were elected: president: Mr. P. S. Stowe; vice-presidents: Mr. G. T. Honniball, Mr. A. J. Harper; hon. secretary: Mr. A. T. Johnson; and hon. treasurer: Mr. K. R. Cheeseman.

At the annual general meeting of the MID-ESSEX LAW SOCIETY, held at Brentwood on 26th October, the following officers were elected for 1957: president, T. F. Hunt (Romford); vice-president, W. R. A. Young (Braintree); hon. secretary, G. C. Green (Brentwood); and hon. treasurer, F. N. Wingent (Chelmsford).

At the meeting of the Council of the RATING AND VALUATION ASSOCIATION, held on 16th November, it was unanimously agreed that Mr. Sidney F. Bartlett, Basingstoke, should be appointed president of the association for the ensuing year.

Country Practice

WRESTLING WITH THE EVIDENCE

YOUR honour, I appear for the plaintiffs, and the defendant Mr. Alfred Nelson appears in person. No, your honour, Mr. Nelson is not actually here, but word has been sent round to him; I understand that at this season of the year he is a little short handed, and is having to attend to a rush of business. He is the licensee of the "Coach and Horses," which, as your honour may have been informed, adjoins this court house. He has informed me that he will take no objection to my opening the plaintiffs' case in his absence. An unusual arrangement, I respectfully agree, but I feel certain he will be here to listen to the evidence, and I know your honour does not wish me to waste time.

From the particulars it will appear that the plaintiffs represent the Great Whittock sports committee and claim the return of a valuable silver trophy, worth £25. The action is framed in trover, detinue, breach of contract, breach of trust and fraud. Great Whittock is a market town in the north of England, and I should have informed your honour that I appear as agent for the plaintiffs' solicitors, Messrs. Bustle & Bustle, of that town. All the evidence relates to events happening in the north of England; the witnesses have all travelled south specially for this case. The defendant resides in this district, your honour, having become a publican when he gave up heavyweight wrestling. The trophy is also within the district of this court; it is indeed to be seen at the defendant's premises which, as I think your honour has already been informed, is next door.

It is necessary to point out that the defendant specialised only in the Cumberland style of wrestling; my clients are prepared to concede that he has never indulged in any other style. The Cumberland style is extensively practised in the northern counties of England and the lowlands of Scotland. In this form of wrestling, the contestants embrace in a peculiar manner and then by skill, strength or good fortune (or, your honour, any combination of all three factors) persuade the other to break his embrace, or fall to the ground, or both. The essence of this manly sport is fairness; but what I am about to say regarding the defendant's conduct, his sordid behaviour in relation to the matter at issue, may well be of vital importance to your honour when deciding upon the equitable or other remedies sought by the plaintiffs.

In the year 1933 the defendant and a Mr. William Click, now deceased, were known to be visiting various sports gatherings in the north of England and elsewhere. The defendant then owned a motor cycle and side-car, and he and Mr. Click would thereby descend upon some sports gathering, enter various wrestling contests and, if I may use the expression, wipe the floor with the local contestants. Mr. Click was, like the defendant, a heavyweight wrestler. The facts concerning the nefarious deeds of which the plaintiffs complain are all to be found in the last will and testament of the late Mr. Click. It was only when the will was published that the plaintiffs became aware of the series of swindles to which they had been subjected.

Your honour, I must agree that it is unusual for a will to be in narrative form. I can only suggest that Mr. Click wrote his will out to salve his own conscience. Under the Evidence Act, 1938, I think the will is admissible. That Act relates to documents which it was the duty of the writer to prepare . . . But, your honour, *everyone* is under a duty to make a will. If your honour will refer to the Book of Common Prayer, on which we are entitled to rely in a similar manner to, say, the Highway Code, as tending to . . . No, your honour, the defendant has taken no objection to the will being admitted as evidence, so I shall summarise what the will says, and not waste your honour's time.

It appears that in 1933 the defendant and Mr. Click entered the All-Weights Wrestling Contest at the Great Whittock Games. The defendant was awarded the first prize of £20 and was entitled to hold, for one year only, the silver trophy described in the particulars of claim. It was then laid down in the rules governing the Great Whittock Games that the trophy should be awarded outright to any wrestler who should gain first prize in three successive years.

In the following year, 1934, the sports committee amended the rules and restricted the all-weights contest to wrestlers residing within 10 miles of Great Whittock. The silver trophy continued to attract entrants to the open contest, but the weight of the wrestlers in the open contest was restricted to 12 stone. I am instructed that the reason for these amendments was that the committee felt that the sports gathering was somewhat at the mercy of really expert gangs of heavyweight wrestlers who were systematically mopping up prize moneys at such functions, to the detriment of the local wrestlers and without in any way increasing the gate money.

On the 1st July, 1934, at about 12 noon, the defendant, accompanied by Mr. Click, approached the Great Whittock sports arena, and then realised that both were disqualified from entering the all-weights contest. Both resided more than 10 miles from Great Whittock and were thus debarred from taking part. Mr. Click's holograph will informs us that they both thereupon entered the committee tent with the object, first, of returning the silver trophy which had been in their possession since the previous year and, secondly, to express some indignation at the change in the rules. No committeeman was present. The tent was empty apart from one or two items of furniture, a first-aid box and a small weighing machine. Your honour, what happened then may be a matter of some doubt; Mr. Click was requested by the defendant to quit the tent, but, nevertheless, while eating a meat pie on the grass outside, heard what he describes as "funny clanking noises." Later that afternoon, they both entered for the under 12-stone open contest and, after being duly weighed, went on to win the first and second prizes respectively, the defendant retaining the silver trophy for the second successive year.

The following day, the 2nd July, a local potato merchant, who will give evidence, discovered that a quantity of lead piping had been inserted into the mechanism of the weighing machine which he had lent to the committee for the purposes of the sports meeting. Various members of the committee, who well remember the contest and who claim to be expert judges of weight, whether of man or beast, will say that the defendant must have weighed at least 13 stone, and that the weighing machine had been rendered entirely inaccurate.

Now I come, your honour, to the following summer—July, 1935. On that occasion the defendant and Mr. Click arrived by motor cycle as before and, as before, made their way to the committee tent. On this occasion, however, the authorities, acting with great caution, had detailed a member of

the committee to be on constant watch. This committeeman, Mr. Gedge, is fortunately still surviving and will give evidence. Having received back the silver trophy from the defendant, Mr. Gedge drew the defendant's attention to the weighing machine—a different model from that of the previous year. This time, the weighing machine was of the type sometimes to be seen in chemists' shops, fitted with a circular dial and revolving pointer, and equipped with a platform rendering it impossible to interfere with the works. Nevertheless, both wrestlers again entered for the under 12-stone open contest.

At two o'clock that afternoon, when the wrestlers arrived to be weighed in, excitement inside the committee tent was intense. All the then members of the committee were present, as well as numerous local wrestlers who retained embittered memories of their discomfiture the previous year. I will now read from Mr. Click's will: " Alf told me to keep my slacks on and get weighed. So I steps on to the machine, with a bang, and the pointer fair whizzed round. Then I felt someone gripping the seat of my trousers and heaving upwards. The pointer then settled at 11 stone nine. Everyone seemed shocked like. Anyhow, I gets off, and when it was Alf's turn, the committeemen stood so close round him, staring at the pointer, that I could hardly get my arm through their legs to give Alf a bit of a lift. He weighed in at 11 stone seven."

Your honour, the result of the afternoon's wrestling was as expected; on this occasion, however, the defendant took away the valuable silver trophy for good, as well as the prize money of £20. Neither he nor Mr. Click was ever seen at Great Whittock again. Following the publication of the late Mr. Click's will, the surviving members of the committee demanded the return of the trophy. It is only their desire to see wrongdoing exposed, your honour, that has led them to travel all these hundreds of miles and to relate, in their own words, and in these unaccustomed surroundings, a narrative of unscrupulous conduct scarcely parallelled in the history of British sport.

I have, I fear, made a longer opening address than I had intended. However, in a note just handed to me, I am informed that the committee have been whiling away the time by inspecting the trophy in its, may I say, honoured resting place. As a result of certain discussions which have taken place I am now instructed to withdraw the summons. Yes, your honour, a very satisfactory outcome, particularly at this season of the year.

" HIGHFIELD "

TALKING " SHOP "

December, 1956.

Plum and Apple are discussing an appeal for funds which is to be put out by the lately appointed Appeal Committee of Apple's old school, Pippin College.

Apple: . . . So I told Quince—secretary to the committee—to draft the appeal. Now he has sent me the first draft and I don't like the look of it at all.

Plum: What's wrong with it?

A.: Everything. Prolix; prosy; muddled; emphasis on the wrong points; faults of composition. Talk about Fowler's English Usage! It takes a schoolmaster to produce such a document . . .

P.: Nothing, I expect, that can't be put right with a bottle of red ink. How about the all-important objects of the trust?

A.: I was coming to that. I'm not at all sure that Quince hasn't overstepped the limits of charity here and there; his draft is so woolly it's difficult to say: but I assume we can put all that straight in the trust deed, and I shall probably have that settled by counsel . . .

P.: Put it all to rights afterwards in counsel's chambers? I don't care for the sound of that. I think you'll find that counsel will want to examine the terms of the appeal very closely. Very probably he will want to adopt the same wording in the trust deed. So, in effect, he will first want to settle the phrasing of the objects in the appeal.

A. (despairingly): Imagine how counsel's draft will look, embedded in the middle of our prospectus. " Such charitable purposes as in the judgment of the trustees shall be for the advancement, welfare or benefit of Pippin College "—that would be the bare minimum; even that is indigestible. Like baking a stone in the bread—one of our millionaires might break a tooth on it.

P. (unmoved): I seem to remember that the odd stone in the bread and the odd piece of string in the milk have been judicially ruled " ***de minimis.***"

A.: No—you are thinking of the chocolate cream bun with a piece of metal in it[1]; it was the loaf of bread that had a piece of string in it.[2] But the plain fact is that it could be a snail in a ginger-beer bottle[3] for all the good it will do to our subscribers; they won't care for foreign bodies in the appeal and the appeal committee will hold strong views about that.

P.: There are ways of arranging it. If the " objects " look too formal in the centre of your honeyed phrases, you can always relegate them to an appendix. Once or twice I have seen appeals in which it is stated that the trust deed is open to inspection at such and such a place. That is an alternative method, but I don't much care for it myself. Few people are likely to take all the trouble to go and look at it, and of those who do some may be of the busy-body type. Won't think the visit worth while unless they lecture you afterwards on real or supposed deformities in the deed. Anyway, people are surely entitled to know what they are being asked to subscribe to, and the objects should therefore be set out clearly in the appeal.

A.: We are agreed upon that. My point is that we don't wish to overload the appeal with legal phraseology. Even the phrase " charitable purposes " means something totally different to a layman. If we paraphrase the objects in the prospectus and in consequence it either goes too far or doesn't go far enough, who is going to complain?

P.: What I call the *cui malo* test; rather neat, don't you think? The reverse of *cui bono*, which so many people seem to think means " What's the use of it?" though in the correct sense it means—very roughly—" to whose advantage."

A. (drily): Very interesting. How would you apply the test here?

P.: Well, take your first proposition. The appeal doesn't go far enough. You'll then be in trouble with counsel and

1 *J. Miller* v. *Battersea Borough Council* [1956] 1 Q.B. 43.
2 *Turner & Son* v. *Owen* [1956] 1 Q.B. 48.
3 *M'Alister* (*or Donoghue*) v. *Stevenson* [1932] A.C. 562.

probably with the trustees of the deed. It will be a matter of conscience. True, consciences can be stretched, but the trouble is that the tensile strength of one conscience differs from that of another. You'll all be asking yourselves how far you can go without concocting some new trust that your subscribers have never so much as considered . . .

A.: But see how often it is done. Those "catastrophe" appeals, for instance. Some eminent person dashes off a letter to the Press, the money pours in, and in due course, usually some months afterwards, a trust deed is cocooned round the letter. As like as not, if you were to appeal for funds to stimulate myxomatosis you would need to keep a careful watch on it, or you would finish up with a trust deed for rabbit-propagation!

P.: Too cynical, for the Press letter is paradoxically a simpler proposition. Your circular letter goes out, as it were, in cold blood; it is a deliberate statement of policy and your subscribers are entitled to assume that your words are carefully chosen. As for rabbits, I fancy that both suppressing and rehabilitating them might be charitable objects—a fascinating speculation that, but perhaps it doesn't help with your problem?

A. (undaunted): I think you were about to expound to me what happens if the appeal is too widely drawn, as I rather think it is at present?

P.: Well, if the appeal introduces non-charitable objects you will certainly find yourself in a difficulty. Counsel may advise a trust within perpetuity limits for the non-charitable objects or dropping them altogether; in the second case you may have to go back to your subscribers, all very troublesome and costly. Then there is the tax aspect—deeds of covenant and so on; you might have to segregate the charitable trusts from the non-charitable and satisfy the Revenue that your covenants are exclusively devoted to the former . . .

A. (hastily): Good enough. I'll tell Quince to moderate his transports; and we'll set the objects out verbatim in an appendix to the appeal. Now what about the tax side of it? Shall I be able to persuade the Revenue to vet the deed before it's executed?

P.: They will make it clear enough that the responsibility is yours; but in practice I've always found them most co-operative. If you send it in draft to the appropriate office in Liverpool[4] they'll tell you, without prejudice, etc., whether it is accepted as an exclusively charitable trust or not.

A.: Then there's another thing. Quince seems to think that there's some difficulty over these deeds of covenant. A long story about some subscriber to a charity who was "stung"—to use his inelegant expression—for tax that he couldn't afford, and a lasting grievance against the charity's board of management for having "let him in for it." Couldn't make head nor tail of it. I told him, of course, that these charitable covenants don't save sur-tax, but he seemed to know that already.

P.: Probably the answer is to be found in the P.A.Y.E. system. Take the case of a taxpayer who is assessed under P.A.Y.E. at less than the full standard rate. If he lops off part of his income for charity, what happens? His earned income relief and reduced rate relief are lopped too, and he finds himself faced with an additional assessment. After all, the whole principle of the thing is that the covenanted sum (grossed up) becomes the income of the charity, whilst the covenantor becomes an unpaid tax collector. If he doesn't pay the tax, how can the charity recover it? That, I must own, isn't the lay view of it; to the layman it's just a clever dodge for nearly doubling the subscription to charity at no expense to himself.

A.: There seems to be some justification for the laity over that. I have seen appeals advertising and stressing no expense to the subscriber. "You have nothing to pay except the twopenny stamp on the standing order," etc. I must take a look at that, but I can't say that I care for the idea of warning subscribers against possible tax assessments. Might as well tell them not to sign and have done with it!

P.: The tensile conscience again. At least you should avoid any suggestion that there will be any saving of sur-tax; and it is a mistake to advertise "no possible expense." Whether or not to go further and put out a word of warning to taxpayers of modest means is a matter for you and the appeal committee. It is difficult to know where to stop, because a covenantor with a substantial income and sizable reliefs could still suffer some loss of earned income relief. I dare say you will finish up with an indistinct formula of some sort, which should be interesting reading. Or you may be content to take refuge in silence and refrain from misleading statements. After all, charity begins at home and your subscribers cannot reasonably expect you to lecture them on their individual tax problems.

A.: I agree. We might be able to say something to the effect that sur-tax payers and people who pay standard rate of tax on a substantial part of their incomes should be involved in little or no expense; but, of course, that kind of hedging statement won't swell the subscription list. It's a pity that Quince ever mentioned this awkward subject; I should have been quite content—but for your lucid explanation—to put the appeal out on the good old-fashioned "doesn't cost you more than tuppence" basis. Well, never mind, we'll have a look at some other appeals and see how the promoters get round it, if they do. Now, there's another thing—nationalisation.

P.: Before you come to that, may I make a suggestion? You mentioned sur-tax payers and, of course, you rightly advised Quince that no relief from sur-tax is normally obtained by means of a covenant for charity. But have you suggested an alternative means whereby such relief *could* be obtained?

A.: Is there one?

P.: I think so; and, of course, the point is that for the sake of sur-tax relief a wealthy subscriber might be willing to provide on a different footing on a more ample scale; hence (possibly) larger income tax recoveries. My plan is quite simple. Let the subscriber covenant with trustees for the benefit of, say, half a dozen named boys at the school; the headmaster will be asked to supply the names; of course, you must stick to the rules—it won't do to provide for his own child in that way and reciprocal arrangements are barred. It is not the college, strictly speaking, but the boys or their parents who benefit, but such a scheme can sometimes be fitted into the general framework of school aims. Quite often there are promising boys, or sons of old boys, that the headmaster would like to accept, but the parents say they can't afford the fees; or there is the special case of a boy who is to be taken away from school on the death of his father, or after a divorce, or simply because of some domestic financial blizzard. I think you told me that the trustees wanted in any case to be able to devote some of their charitable funds to the education of selected boys, but there was a doubt whether it would be a charitable object or strictly for the

4 Chief Inspector of Taxes (Claims), Seafield House, Waterloo Road, Seaforth, Liverpool, 21.

benefit of the college to do so. If you could induce one or two wealthy subscribers to foot the bill for that—on the basis, of course, that it is a trust for named individuals—you would, in effect, be killing two birds with one stone.

A.: I can't tell you how much I dislike all this nonsense. Bits of papers with sealing wax, or smudgy marks in lieu, and all the rigmarole. Never mind, I'll certainly think about it. Now as to nationalisation . . .

P.: I have heard it all before. Subscribers fearful of. Put provision in the deed safeguarding against. If nationalised, trusts over. All I can say is, try it if you like. The Government always has the last word plus the aid of the parliamentary draftsman. Also, you can be sure that the National Health Service Act, 1946, will provide a useful precedent if the public schools are ever nationalised.

A.: Odd that you should say that. I was looking up the hospital cases to see how to frame a suitable clause to meet nationalisation.

P.: And you can bet that the framers of any new Act will look them up too. If you want to discourage your committee from chasing the nationalisation hare, you might do worse than refer them to the Endowed Schools Acts, 1869 to 1948. As like as not, when you come to examine them you will come to the conclusion that Pippin College is as good as nationalised already. (*Referring to Halsbury's Statutes*): I see that the 1869 Act does not apply to any of the schools mentioned in the Public Schools Act, 1868. They were Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby and Shrewsbury. Pippin College does not seem to be mentioned: odd. There are other exemptions but I doubt if any of them can be invoked. So what it amounts to is this—that once your new trust is established, if the Minister of Education cared to make a scheme in relation to it, he could probably do so.

A.: My dear Plum, this has been a most stimulating talk, but to an Old Pippinian such as myself some of your notions are excessively painful. If the Endowed Schools Acts say what you say they say—with respect, I doubt it—I certainly have no intention of looking at them.

P.: There is, of course, the important and possibly relevant case of *Re Stockport Ragged and Industrial Schools*, decided in 1898 . . .

"ESCROW."

NOTES OF CASES

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Court of Appeal

STANDARD OF PROOF: CIVIL ACTION: ALLEGATION OF FRAUD: BALANCE OF PROBABILITY

Hornal *v.* Neuberger Products, Ltd.

Denning, Hodson and Morris, L.JJ. 20th November, 1956

Appeal from Willesden County Court.

The plaintiff in an action for damages for breach of warranty or, alternatively, for fraudulent misrepresentation, alleged that the director of the defendant company had in the course of negotiations for the purchase of a used capstan lathe stated that it had been "Soag reconditioned"—Soag being a reputable firm of toolmakers. The defendants denied that the statement had been made. If it had been made, the director must have known it to be untrue. The county court judge found that the statement had been made, but held on the claim for breach of warranty that it had not been made contractually. On the claim based on fraud he said that he was satisfied on the balance of probability that the statement had been made, and that that was the correct standard to apply; but that he would not have been so satisfied if the criminal standard of proof was to be applied. He gave judgment for the defendants on the ground that the plaintiff had not shown that he had suffered damage by relying on the fraudulent misrepresentation; but he ordered that the plaintiff should pay only one-fourth of the defendants' costs. The plaintiff appealed and the defendants cross-appealed.

DENNING, L.J., said that having found on the balance of probability that the statement that the lathe had been "Soag reconditioned" had been made by the defendants' director, the judge had found on the balance of probabilities—the civil standard—that it was not a contractual warranty because it was not so intended; and the court should not disturb that finding. The judge had then considered whether the director was guilty of fraud, and on that issue the only question was whether he had made the representation or not. It was there that the judge had run into difficulty, for he had said that if he had to be satisfied beyond all reasonable doubt he would not be so satisfied, though on the preponderance of probability he had come to the conclusion that the statement had been made. But the judge having set the problem to himself, his lordship thought that the judge had answered it correctly. He had reviewed all the cases and had held, rightly, that the standard of proof depended on the nature of the issue. The more serious the allegation the higher the degree of probability that was required; but it need not, in a civil case, reach the very high standard required by the criminal law. His lordship had already expressed his views on that subject in *Bater* v. *Bater* [1951] P. 35, 36–37. Though in some of the insurance cases in which an insured person had tried to defraud an insurance company the judges had said that the offence of arson or malicious damage must be as fully proved as a criminal charge, the latest case in the House of Lords, *Lek* v. *Mathews* (1927), 29 Ll. L. Rep. 141, showed that Lord Sumner (at p. 164) had considered that proof was only necessary according to the civil standard. The finding of the county court judge here [that the statement had been made] should accordingly not be disturbed. But the judge had dismissed the plaintiff's claim for fraud because he had said that the plaintiff had suffered no damage since the machine was worth quite as much as, if not more than, the plaintiff had paid for it. His lordship did not agree; for the representation was made in order to persuade the plaintiff to buy the machine, and he did to some extent rely on it. He had taken the machine in the belief that it was fit for immediate use whereas it was not; and he was put to delay in getting it put right. That was a head of damage which could properly be said to flow from the fraudulent misrepresentation. The appeal should be allowed and the cross-appeal dismissed.

HODSON, L.J., concurring, said that in most civil cases where the standard of proof in cases involving crime had been mentioned, there had been no argument, and the heavier burden of proof had been accepted by counsel or assumed as necessary by the judge. The true view and that most strongly supported by authority was that which the judge took, namely, that in a civil case the balance of probability standard was correct. But there was in truth no great gulf fixed between balance of probability and proof beyond reasonable doubt. Although when there was a criminal prosecution the latter standard was securely fixed in our law, yet the measure of probability was still involved in the question of proof beyond reasonable doubt. His lordship fully agreed with what Denning, L.J., had said in *Bater* v. *Bater*, *supra*, namely, that in both civil and criminal cases the degree of probability must be commensurate with the occasion and proportionate to the subject-matter.

MORRIS, L.J., also concurring, said that if the director had spoken the two words alleged the words might have been a warranty or might have been a representation, which in this case would be actionable because fraudulent. It would be strange if different standards of proof as to the speaking of the two words could be applicable according to what civil legal

rights followed. What was vital in a criminal matter was not the mere using of some particular formula of words but the effect of a summing-up in giving true guidance as to the right approach. Appeal allowed. Cross-appeal dismissed.

APPEARANCES: *R. Brian Gibson* (*Goodman, Monroe & Co.*); *Samuel Stamler* (*C. Butcher & Simon Burns*).

[Reported by Miss M. M. HILL, Barrister-at-Law.] **[3 W.L.R. 1034**

Chancery Division

PRACTICE: SUMMONS FOR POSSESSION BY MORTGAGEE: POWER OF COURT TO STAND OVER GENERALLY

Robertson *v.* Cilia

Upjohn, J. 31st October, 1956

Adjourned summons.

By a practice direction made under R.S.C., Ord. 55, r. 5A (Annual Practice, 1956, p. 1125): "Where possession is sought and the defendant is in arrear with any instalments under the mortgage or charge and the master is of opinion that the defendant ought to be given an opportunity to pay off the arrears, the master may adjourn the summons on such terms as he thinks fit . . ." A mortgagee applied by summons to the court for an order for possession of the mortgaged property on the ground that payment of the instalments was in arrear. The mortgagor made an application for the case to stand over generally. After certain interlocutory proceedings, the summons was adjourned into court in order that it might be determined to what extent the court had power to stand over generally a summons of this nature. At the time of the hearing all arrears of instalments due under the mortgage had been paid up, but the right to repay by instalments had lapsed and it was admitted that, owing to general credit restrictions, the mortgagor would not be in a position to redeem within any foreseen time.

UPJOHN, J., said that it was admitted that the mortgagee had been for some time entitled at law to enforce her security and enter into possession. It was argued for the mortgagee that the court had no right to stand over the summons generally, even on terms, without her consent. That raised a challenge to what seemed to be a very frequent practice by masters in the Chancery Division. The mortgagee would not object to an adjournment for a fixed period of two or three months if the mortgagor wanted to make arrangements to pay off the whole amount, but the mortgagor admitted that such an adjournment would be of no use, as owing to the "credit squeeze" it was impossible to obtain a loan to pay off an existing mortgage. Both sides relied on *Hinckley and South Leicestershire Building Society* v. *Freeman* [1941] Ch. 32. The mortgagee there claimed an immediate order for possession, and it was contended that there was no power to order an adjournment to give the defendant time to pay off the arrears. Farwell, J., said that it was a novel proposition that the court had not power to adjourn any matter on any proper ground, although it would not, of course, arbitrarily postpone the hearing indefinitely, as that might defeat justice. At the same time, Farwell, J., recognised that if a mortgagee had a right to possession he must get it. In the present case the mortgage was now enforceable, and the mortgagee was entitled to possession in order to realise her security. The court had no right to stand the matter over generally without the mortgagee's consent, even on terms, first, because to do so would be to force the parties to an agreement which they had never made, and, secondly, to do so would be postponing indefinitely on terms which there was no power to impose the right of the mortgagee to have her case for possession tried. That would amount to an arbitrary refusal to hear the case. The whole object of the new rule and direction made in 1936 was to give the mortgagor a reasonable time to make an acceptable offer, but in the circumstances of the present case no acceptable offer could be put forward. There would be an order for possession two months after the service of the order. Order accordingly.

APPEARANCES: *G. C. Raffety* (*Lewis W. Taylor & Co.*); *S. W. Templeman* (*Dowding & Dowding*, Orpington, Kent).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1502**

PRACTICE: SPECIFIC PERFORMANCE: ORD. 14a PROCEEDINGS: CONSIDERATION OTHER THAN CASH

Robshaw Brothers, Ltd. *v.* Mayer

Upjohn, J. 13th November, 1956

Procedure summons.

By R.S.C., Ord. 14A, r. 1 (1), a plaintiff in the Chancery Division in an action for specific performance of an agreement "for the sale or purchase of property" may on presenting an affidavit that there is believed to be no defence to the action obtain judgment, unless the defendant shows good cause otherwise. By a contract, embodied in the 16th ed. of the National Conditions of Sale, dated 26th March, 1956, the vendors contracted to sell certain leasehold property to a purchaser. In a memorandum endorsed on the National Conditions of Sale the price was expressed to be *nil*, the reason being that the property was held at a substantial rent, and the consideration for the transfer was the assumption that the tenant would undertake the obligations contained in the lease; and, consequently, no money passed. The vendors having commenced an action for specific performance, a summons for judgment was issued under Ord. 14A and an application was made to the court in a procedure summons to determine whether such procedure was appropriate in the case of such a contract, the question being whether the phrase "sale or purchase" in the order meant the transfer of property for money or could be used in a wider sense to cover a transfer for valuable consideration.

UPJOHN, J., said that the defendant contended that the contract was not one for the "sale or purchase" of property, as "sale" meant a sale for money and no money passed. The plaintiff contended that the words had no fixed meaning, and should receive a wide meaning appropriate to the contract. The law was correctly stated by Mr. Cyprian Williams in an article (65 SOL. J. 286) in which he criticised the decision in *In re Sutton's Contract* [1921] W.N. 9; 65 SOL. J. 259, and stated that it was well established by judicial authority that the primary meaning of "sale" was the conveyance of some article for money, and referred to *J. & P. Coats* v. *Commissioners of Inland Revenue* [1897] 1 Q.B. 778. More recently it was held in *Simpson* v. *Connolly* [1953] 1 W.L.R. 911 that an agreement to extinguish an existing debt if land was transferred was not a sale of land. In some contexts the word must be given a wider meaning, e.g., in s. 1 of the Vendor and Purchaser Act, 1874, and s. 39 of the Settled Land Act, 1925. But the question was what was its meaning in the context of the order. It should be given a wider ambit, if possible, as the procedure was of great utility, but there was no context in the order which would justify an extension beyond the *prima facie* meaning of a transaction for money. The defendant's objection, accordingly, succeeded. Application dismissed.

APPEARANCES: *M. Roth* (*Montagu's and Cox & Cardale*, for *Snell & Co.*, Tunbridge Wells); *M. Price* (*Roche, Sons & Neal*, for *Peter Horden*, Bournemouth).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

NEW TRADE MARKS RULES

Some changes in the rules governing trade marks have been announced recently by the Board of Trade. The prohibition on the use of the Royal or Imperial arms in trade marks has been clarified. In particular, such words as "Royal" or "Imperial" are no longer forbidden unless their use implies Royal patronage, past or present. The prohibition on the use of the word "Anzac" in trade marks remains in force. The revision also includes an extension from one to two months of the period allowed in certain procedures where applications have to be made to the Registrar.

These changes are given effect by the Trade Marks (Amendment) Rules, 1956 (S.I. 1956 No. 1844), which came into operation on 30th November.

IN WESTMINSTER AND WHITEHALL

ROYAL ASSENT

The following Bills received the Royal Assent on 28th November :—

Clyde Navigation Order Confirmation.
Oban Burgh Order Confirmation.
Police, Fire and Probation Officers Remuneration.

HOUSE OF LORDS

Progress of Bills

Read First Time :—

Agriculture (Silo Subsidies) Bill [H.C.] [27th November.
Air Corporations Bill [H.C.] [27th November.

Read Second Time :—

Expiring Laws Continuance Bill [H.C.] [29th November.
Shops Bill [H.L.] [29th November.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Cheques Bill [H.C.] [27th November.

To make amendments of the law relating to cheques and similar instruments; in respect of the endorsement thereof; to the discharge of obligations by cheque; to the recognition of cheques as receipts; to crossed and uncrossed cheques and the giving of value therefor; and to make consequent amendments of the law relating to the rights and duties of paying bankers, collecting bankers and bankers' customers towards each other.

Electricity Bill [H.C.] [27th November.

To provide for the dissolution of the Central Electricity Authority and the establishment of a Central Electricity Generating Board and an Electricity Council, and for the transfer of functions of the said Authority to that Board or Council or to the Minister of Fuel and Power; to make further provision as to other matters relating to the supply of electricity; and for purposes connected with the matters aforesaid.

Ghana Independence Bill [H.C.] [28th November.

To make provision for, and in connection with, the attainment by the Gold Coast of fully responsible status within the British Commonwealth of Nations.

In Committee:—

Homicide Bill [H.C.] [28th November.

B. Questions

Charities: "Religious, Social and Physical Well-being"

Miss Herbison asked the Chancellor of the Exchequer how long it would take to complete the examination of the effects of *Inland Revenue Commissioners* v. *Baddeley* [1955] 2 W.L.R. 552; 99 Sol. J. 166. A number of charitable organisations, particularly those attempting to bring happiness to old people, were urgently awaiting the results of this examination, and finances were suffering greatly. Mr. H. Brooke said that examination of this complex problem was in progress and its urgency was recognised, but he regretted that he could not yet name a date for its completion. [29th November.

STATUTORY INSTRUMENTS

Air Navigation (Radio) (Amendment) Regulations, 1956. (S.I. 1956 No. 1845.) 5d.
Coal and Other Mines (Abandonment Plans) Rules, 1956. (S.I. 1956 No. 1783.) 5d.
Coal and Other Mines (Electricity) Order, 1956. (S.I. 1956 No. 1766.) 7d.
Coal and Other Mines (Fire and Rescue) Order, 1956. (S.I. 1956 No. 1768.) 10d.
Coal and Other Mines (First Aid) Order, 1956. (S.I. 1956 No. 1774.) 6d.
Coal and Other Mines (General Duties and Conduct) Order, 1956. (S.I. 1956 No. 1761.) 5d.
Coal and Other Mines (Horses) Order, 1956. (S.I. 1956 No. 1777.) 6d.
Coal and Other Mines (Locomotives) Order, 1956. (S.I. 1956 No. 1771.) 8d.
Coal and Other Mines (Managers and Officials) Order, 1956. (S.I. 1956 No. 1758.) 8d.
Coal and Other Mines (Mechanics and Electricians) Order, 1956. (S.I. 1956 No. 1759.) 7d.
Coal and Other Mines (Precautions against Inrushes) Order, 1956. (S.I. 1956 No. 1770.) 5d.
Coal and Other Mines (Safety-Lamps and Lightings) Order, 1956. (S.I. 1956 No. 1765.) 7d.
Coal and Other Mines (Sanitary Conveniences) Order, 1956. (S.I. 1956 No. 1776.) 5d.
Coal and Other Mines (Shafts, Outlets and Roads) Order, 1956. (S.I. 1956 No. 1762.) 11d.
Coal and Other Mines (Sidings) Order, 1956. (S.I. 1956 No. 1773.) 6d.
Coal and Other Mines (Steam Boilers) Order, 1956. (S.I. 1956 No. 1772.) 5d.
Coal and Other Mines (Support) Order, 1956. (S.I. 1956 No. 1763.) 6d.
Coal and Other Mines (Surveyors and Plans) Order, 1956. (S.I. 1956 No. 1760.) 6d.
Coal and Other Mines (Ventilation) Order, 1956. (S.I. 1956 No. 1764.) 8d.
Coal and Other Mines (Working Plans) Rules, 1956. (S.I. 1956 No. 1782.) 5d.
Coal Mines (Explosives) Order, 1956. (S.I. 1956 No. 1767.) 11d.
Coal Mines (Medical Examinations) Order, 1956. (S.I. 1956 No. 1775.) 5d.
Coal Mines (Precautions against Inflammable Dust) Order, 1956. (S.I. 1956 No. 1769.) 6d.
Fertilisers and Feeding Stuffs (Amendment) Regulations, 1956. (S.I. 1956 No. 1853.) 7d.
Glasgow Water Byelaws (Extension of Operation) Order, 1956. (S.I. 1956 No. 1858 (S. 86).)
London Traffic (Prescribed Routes) (Wood Green and Hornsey) Regulations, 1956. (S.I. 1956 No. 1848.)
Mines and Quarries (References) Rules, 1956. (S.I. 1956 No. 1784.) 7d.
Miscellaneous Mines (Electricity) Order, 1956. (S.I. 1956 No. 1779.) 7d.
Miscellaneous Mines Order, 1956. (S.I. 1956 No. 1778.) 11d.
National Health Service (General Dental Services) (Scotland) Amendment (No. 2) Regulations, 1956. (S.I. 1956 No. 1847 (S. 84).) 5d.
Quarries (Electricity) Order, 1956. (S.I. 1956 No. 1781.) 7d.
Quarries Order, 1956. (S.I. 1956 No. 1780.) 8d.
Retention of Cable, Main and Pipe under Highway (Plymouth) (No. 1) Order, 1956. (S.I. 1956 No. 1835.) 5d.
Stopping up of Highways (Cornwall) (No. 4) Order, 1956. (S.I. 1956 No. 1836.) 5d.
Stopping up of Highways (London) (No. 42) Order, 1956. (S.I. 1956 No. 1833.) 5d.
Stopping up of Highways (London) (No. 43) Order, 1956. (S.I. 1956 No. 1837.) 5d.
Stopping up of Highways (London) (No. 44) Order, 1956. (S.I. 1956 No. 1838.) 5d.
Stopping up of Highways (Midlothian) (No. 1) Order, 1956. (S.I. 1956 No. 1842 (S. 83).) 5d.
Stopping up of Highways (West Ham) (No. 1) Order, 1956. (S.I. 1956 No. 1834.) 5d.
Stopping up of Highways (West Riding of Yorkshire) (No. 22) Order, 1956. (S.I. 1956 No. 1839.) 5d.
Stopping up of Highways (West Riding of Yorkshire) (No. 23) Order, 1956. (S.I. 1956 No. 1849.) 5d.
Trade Marks (Amendment) Rules, 1956. (S.I. 1956 No. 1844.) 5d. See p. 916, *ante*.
Veterinary Surgeons (Republic of Ireland University Degrees) (Dublin) Order of Council, 1956. (S.I. 1956 No. 1823.)
Veterinary Surgeons (Republic of Ireland University Degrees) (National University) Order of Council, 1956. (S.I. 1956 No. 1824.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

Mr. RICHARD HADDOW FORREST, Q.C., has been appointed Recorder of the City of Salford.

Mr. RUDOLPH LYONS, Q.C., has been appointed Recorder of the City of Newcastle upon Tyne.

Mr. SYDNEY E. POCOCK, O.B.E., has been elected Treasurer of Gray's Inn for the year 1957, in succession to Vice-Chancellor Sir LEONARD STONE, O.B.E., who has been elected Vice-Treasurer for the same period.

Mr. NIGEL VERNON REED, Chief Registrar, High Court, Northern Region, Nigeria, has been appointed a Judge of the High Court, Northern Region, Nigeria.

Personal Notes

Mr. Nicholas L. C. Macaskie, Q.C., Recorder of Sheffield for sixteen years, will be resigning that post after the January quarter sessions.

Miscellaneous

" RULE OF LAW "

A talk entitled " Freedom and the Rule of Law " will be given on Sunday, 9th December, in the B.B.C.'s Third Programme, by F. A. Hayek, Professor of Social and Moral Science at Chicago University.

DEVELOPMENT PLANS

CITY AND COUNTY OF KINGSTON UPON HULL DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 8th November, 1956, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the undermentioned district. A certified copy of the proposals as submitted has been deposited for public inspection at the Guildhall, Alfred Gelder Street, Kingston upon Hull (Room 39). The copy of the proposals so deposited together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested at the place mentioned above between the hours of 10 a.m. and 5 p.m. on Mondays to Fridays and between the hours of 10 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st December, 1956, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Planning Authority for the City and County of Kingston upon Hull and will then be entitled to receive notice of any amendment to the plan made as a result of the proposals.

NORTHUMBERLAND COUNTY DEVELOPMENT PLAN

Blyth Town Map

Designation Map B/1—Blyth

The above town map and designation map, both of which are prepared as part of the above development plan, were, on 12th November, 1956, submitted to the Minister of Housing and Local Government for approval. The town map comprises the greater part of Blyth Municipal Borough. The designation map relates to an area of approximately 18,387 square yards on the east of Regent Street, Blyth. Certified copies of the town map and designation map as submitted for approval have been deposited for public inspection at the County Hall, Newcastle upon Tyne, 1, and at the Town Clerk's Office, 75 Marine Terrace, Blyth. The copies of the town map and designation map so deposited are available for inspection free of charge by all persons interested at the places mentioned above during normal office hours. Any objection or representation with reference to the town map or designation map may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st December, 1956, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Northumberland County Council at the office of the Clerk of the County Council, County Hall, Newcastle upon Tyne, 1, and will then be entitled to receive notice of the eventual approval of the town map.

SOUTHAMPTON DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Southampton. The plan, as approved, will be deposited in the Municipal Offices, Civic Centre, Southampton, for inspection by the public.

Wills and Bequests

Mr. Edward Gray Bagshawe, solicitor, of Sheffield, left £16,568 (£16,515 net).

Colonel G. S. Field, solicitor, of Reading, left £42,450 net.

OBITUARY

MR. A. W. HANDS

Mr. Arthur William Hands, retired solicitor, of Scarborough, died recently, aged 83. He was admitted in 1896.

MR. E. VINTER

Mr. Ernest Vinter, M.A., LL.M., retired solicitor, of Cambridge, died on 25th November, aged 88. He was admitted in 1893.

SOCIETIES

The annual meeting of the LOCAL GOVERNMENT LEGAL SOCIETY took place on 17th November at University College, London. In the morning, Professor R. C. FitzGerald, LL.B., Dean of the Faculty of Laws of University College, gave a talk on recent trends in local government (p. 882, *ante*). At the luncheon, Sir Edwin Herbert, K.B.E., President of The Law Society, in proposing the toast to the Society, emphasised that a salaried solicitor had a special relationship with the local authority who employed him, which was different from that which existed between a local authority and other employees, because the solicitor had special responsibilities as a member of the profession. Mr. R. O. F. Hickman, the chairman of the Society, replied. The health of the Guests was proposed by Mr. F. Dixon Ward, vice-chairman, and Mr. Desmond Heap, P.P.T.P.I., replied on behalf of the Guests, who included representatives of the Society of Town Clerks, Civil Service Legal Society, Scots Local Government Legal Society, County Councils Association, and other bodies.

The general meeting in the afternoon was attended by about seventy members, and the following appointments were made for the ensuing year: chairman, Mr. F. Dixon Ward, Town Hall, Hove; vice-chairman, Mr. R. N. D. Hamilton, County Hall, Aylesbury, Bucks; hon. treasurer, Mr. D. E. Almond, Corporation Offices, Lincoln; and hon. secretary, Mr. J. D. Schooling, Shirehall, Worcester.

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